

No. 14965

United States
Court of Appeals
for the Ninth Circuit

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife, and CATHERINE YOUNG COBB,

Appellants,

vs.

UNITED STATES OF AMERICA, STATE OF CALIFORNIA, CITY OF OAKLAND and COUNTY OF ALAMEDA,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

OCT 5 1956

PAUL P. O'BRIEN, CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

PAGE

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb	22
Answer to Second Amendment to Complaint ..	32
Answers of Agnes B. Graham to Request for Admissions	41
Answers of Warren C. Graham to Request for Admissions	42
Answers of Agnes B. Graham to Written Interrogatories	34
Answers of Warren C. Graham to Written Interrogatories	37
Application for Leave to Correct an Oversight and Omission in the Decree of Foreclosure and Order of Sale	235
Certificate of Clerk	228
Certificate of Clerk, Supplemental	232
Complaint	3
Complaint, Amendment to	21
Complaint, Second Amendment to	29
Complaint, Third Amendment to	43

INDEX	PAGE
Counsel, Names and Addresses of	1
Decree of Foreclosure and Order of Sale	68
Findings of Fact and Conclusions of Law	50
Judgment	65
Notice of Appeal	73
Notice of Appeal, Amended	74
Order of the Court Dated August 25, 1955 ...	47
Statement of Points on Appeal	234
Transcript of Proceedings	75
Witnesses:	
Cobb, Catherine Young	
—direct	156
—cross	165, 186
—by the court	177
Cunningham, Daniel F.	
—direct	203
Gardener, Harold W.	
—direct	119
Graham, Agnes B.	
—direct	190
—cross	196
—redirect	203
Graham, Thomas H.	
—direct	150
—cross	155

INDEX

PAGE

Witnesses—(Continued)

Graham, Warren C.

- direct108, 224
- cross125, 226
- by the court138, 146

Harkness, Lynn L.

- direct 220
- cross 222

McGregor, Hilda E.

- direct 86
- cross 107

Meehan, Henry G.

- direct 214
- cross 217

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Counsel for Appellees.

In the District Court of the United States, Northern District of California, Southern Division

No. 30821

UNITED STATES OF AMERICA,
Plaintiff,
vs.

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife; FRANK HANSEN, a Single Man; CATHERINE YOUNG COBB and J. PRESTON COBB, Her Husband; STATE OF CALIFORNIA, a Corporate Body Politic; COUNTY OF ALAMEDA, State of California, a Municipal Corporation; CITY OF OAKLAND, California, a Municipal Corporation; STATE BOARD OF EQUALIZATION, State of California; CROFTS & ANDERSON, a Copartnership; JOHN DOE, RICHARD ROE, SALLY POE, MARY POE, DOE and POE, a Copartnership; POE and ROE, a Copartnership; X COMPANY, a Corporation; Y COMPANY, a Corporation, and Z COMPANY, a Corporation,
Defendants.

COMPLAINT FOR FORECLOSURE OF
FEDERAL TAX LIENS

Plaintiff complains of defendants and alleges:

I.

That the plaintiff is a corporate and sovereign body politic.

II.

That this is an action for the collection of Internal Revenue taxes brought at the request of the Attorney General of the United States and authorized and sanctioned by the United States Commissioner of Internal Revenue.

III.

That the defendant, Warren C. Graham, and W. C. Graham are one and the same identical person, resident in the County of Alameda, City of Oakland, State of California, and the above-entitled judicial District.

IV.

That the defendant, Agnes B. Graham, Agnes Bourke Graham, Agnes Graham and Mrs. W. C. Graham are one and the identical person, resident in the County of Alameda, City of Oakland, State of California, and the above-entitled judicial District.

V.

That the defendant, State of California, is a corporate body politic.

VI.

That the defendants, County of Alameda, State of California, and City of Oakland, California, are municipal corporations organized and existing under and by virtue of the laws of the State of California.

VII.

That the defendants, Warren C. Graham and Agnes B. Graham, are now and at all of the times

herein mentioned have been husband and wife, domiciled in the State of California.

VIII.

That the defendants, Catherine Young Cobb and J. Preston Cobb are husband and wife and residents of the City of Oakland, County of Alameda, State of California, in the above-entitled judicial district.

IX.

That the defendant, State Board of Equalization, State of California, is a division of the defendant, State of California.

X.

That the defendant, Crofts and Anderson, plaintiff believes to be a copartnership.

XI.

That the defendants, John Doe, Richard Roe, Sally Poe, Mary Poe, Doe and Poe, a copartnership; Poe and Roe, a copartnership; X Company, a corporation; Y Company, a corporation, and Z Company, a corporation, are sued under fictitious names for the reason that the plaintiff has been and is unable to ascertain their true names, but when the true names of said persons, or any of them, are discovered the plaintiff will ask leave to amend this Complaint by designating said persons therein by their true names.

XII.

That plaintiff is informed and believes and therefore alleges that the defendants, Warren C. Gra-

ham and Agnes B. Graham, were, at the times the hereinafter-described Federal tax liens arose, the owners of real property in the city of Oakland, County of Alameda, State of California, described as follows:

Beginning at the point of intersection of the southeastern line of Wood Drive with the western line of lot 7 in block "H," as said drive, lot and block are shown on the map of "Montclair Estates," hereinafter referred to; running thence along the said line of Wood Drive the four following courses and distances: Northeasterly along the arc of a curve to the left with a radius of 185.00 feet, a distance of 26.79 feet; north $61^{\circ} 45'$ east 130.94 feet; northeasterly along the arc of a curve to the right with a radius of 170.00 feet, a distance of 93.22 feet and northeasterly along the arc of a compound curve to the right with a radius of 44.00 feet, a distance of 17.65 feet to a point on the southeastern line of said lot 7; thence along the southern, southwestern and western lines of Wood Drive, as said drive is shown on the map of "Montclair Acres," hereinafter referred to, the four following courses and distances: Easterly and southeasterly along the arc of a curve to the right with a radius of 44.00 feet, a distance of 61.51 feet; south $16^{\circ} 15'$ west 92.00 feet; southerly along the arc of a curve to the left with a radius of 225.00 feet, a distance of 76.35 feet and south $3^{\circ} 11' 30''$

east 20.14 feet; thence leaving said western line of Wood Drive south $69^{\circ} 19' 27''$ west 163.45 feet to the southeastern corner of said lot 7; thence along the general southern boundary line of said block "H" the following seven courses and distances: North $6^{\circ} 03' 40''$ west 19.70 feet; north $65^{\circ} 31' 10''$ west 23.60 feet; south $57^{\circ} 44'$ west 74.67 feet; south $37^{\circ} 46' 10''$ west 110.27 feet; north $76^{\circ} 54'$ west 39.13 feet; north $16^{\circ} 15' 20''$ west 108.71 feet and north $28^{\circ} 53' 40''$ west 10.56 feet; thence north $45^{\circ} 21'$ east 202.43 feet to a point on the said western line of lot 7; thence north $0^{\circ} 54' 40''$ east 37.90 feet to the point of beginning.

Being a portion of lots 6 and 6-"A" and all of lot 7 in block "H," as said lots and block are shown on the map of "Montclair Estates, Oakland, Alameda County, California," filed October 9, 1922, in book 3 of Maps, page 43, in the office of the County Recorder of Alameda County.

And Being Also a portion of lot 6 in block "G," as said lot and block are shown on the map of "Montclair Acres, Oakland, Alameda County, California," filed June 7, 1921, in book 7 of Maps, pages 86 and 87, in the office of the County Recorder of Alameda County.

and that the defendants, Warren C. Graham and Agnes B. Graham, his wife, were and are the owners of the furniture and furnishings located in said residence.

XIII.

That the defendants above named claim some right, title or interest in and to the above-described real and personal property or some part thereof, but that such right, title and interest of the above-named defendants, if any they have, is junior, inferior and subordinate to the hereinafter-described tax liens of the plaintiff, United States of America

For a First Cause of Action Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here re-alleged and adopted.

II.

That the Commissioner of Internal Revenue assessed Federal income and excess profits taxes for the year 1942 against Warren C. Graham, c/o Graham Ship Repair Company, 501 First St., Oakland, California, as the transferee of the Kincaid Company, in the amount of \$16,656.37.

III.

The Commissioner of Internal Revenue's assessment list carrying the assessment of said 1942 income and excess profits taxes against Warren C. Graham, as transferee of Kincaid Company was received in the office of the Collector of Internal Revenue on March 23, 1945, and said Collector issued notice and demand for the payment of said taxes to Warren C. Graham, the taxpayer, on March 27, 1945.

IV.

That notwithstanding said notice and demand for payment no part of said tax has been paid and the whole thereof, together with the penalties and interest provided by law, remains assessed, outstanding and unpaid.

V.

The Collector of Internal Revenue at San Francisco, California, filed a notice of lien securing the payment of said 1942 income and excess profits taxes, assessed against Warren C. Graham as the transferee of the Kincaid Company, in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946.

VI.

That a tax lien in favor of the United States arose upon all of the property, and rights to property, whether real or personal, including the above-described real and personal property, of Warren C. Graham, the taxpayer, on March 23, 1945, the date that the Collector of Internal Revenue received the Commissioner's Assessment List carrying said Assessment of 1942 income and excess profits taxes against Warren C. Graham as transferee of Kincaid Company, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946. That said lien is still outstanding and existing.

For a Second Cause of Action Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue assessed Federal income and excess profits taxes for the year 1942 against Agnes Bourke Graham, c/o Graham Ship Repair Company, 501 First Street, Oakland, California, as the transferee of the Kincaid Company, in the amount of \$16,773.02.

III.

The Commissioner of Internal Revenue's Assessment List carrying the assessment of said 1942 income and excess profits taxes against Agnes Bourke Graham, as transferee of the Kincaid Company was received in the office of the Collector of Internal Revenue on May 11, 1945, and said Collector issued Notice and Demand for the payment of said taxes to Agnes Bourke Graham, the taxpayer, on May 21, 1945.

IV.

That notwithstanding said Notice and Demand for payment no part of said tax has been paid and the whole thereof, together with the penalties and interest provided by law, remains assessed, outstanding and unpaid.

V.

The Collector of Internal Revenue at San Francisco, California, filed a Notice of Lien securing the payment of the said 1942 income and excess profits taxes assessed against Agnes Bourke Graham, as the transferee of the Kincaid Company, in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946.

VI.

That a tax lien in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Agnes Bourke Graham, the taxpayer, on May 11, 1945, the date the Collector of Internal Revenue received the Commissioner's Assessment List carrying said assessment of 1942 income and excess profits taxes against Agnes Bourke Graham as transferee of Kincaid Company, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946. That said lien is still outstanding and existing.

For a Third Cause of Action Plaintiff Allges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue assessed Federal income taxes for the years 1945 and 1946 against Warren C. and Agnes B. Graham, 6035 Wood Drive, Oakland, California, in the amount of \$1,139,375.68.

III.

That the Commissioner of Internal Revenue's Assessment List carrying the assessment of said 1945 and 1946 income taxes against Warren C. and Agnes B. Graham was received in the office of the Collector of Internal Revenue on August 1, 1949, and said Collector issued Notices and Demands for payment of said taxes to Warren C. and Agnes B. Graham, the taxpayers, on August 1, 1949, and on September 2, 1949.

IV.

That notwithstanding said Notice and Demand for payment no part of said tax has been paid and the whole thereof, together with the penalties and interest provided by law, remains assessed, outstanding and unpaid.

V.

That the Collector of Internal Revenue at San Francisco, California, filed a Notice of Lien securing the payment of said 1945 and 1946 income taxes assessed against Warren C. and Agnes B. Graham in the office of the County Recorder of Alameda County, State of California, on November 30, 1949.

VI.

That a tax lien in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Warren C. and Agnes B. Graham, the taxpayers, on August 1, 1949, the date the Collector of Internal Revenue received the Commissioner's Assessment List carrying said assessment of 1945 and 1946 income taxes against Warren C. and Agnes B. Graham, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 30th day of November, 1949. That said lien is still outstanding and existing.

For a Fourth Cause of Action Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue on December 6, 1946, assessed Federal Withholding taxes, penalties and interest against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Company, 1401 Middle Harbor Road, Oakland, California, for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946 upon his, the Commissioner's December, 1946, Special No. 2 Assess-

ment List, lines 00, 02, 04, 06, 08, 10 and 12, and December, 1946, Supplemental List Account No. 350543 in the aggregate amount of \$542,706.95.

III.

That the Commissioner of Internal Revenue's (telegraphic jeopardy) December, 1946, Special Assessment List, No. 2, carrying assessments of said Federal Withholding taxes, penalties and interest in the aggregate amounts of \$542,456.85 against Warren C. Graham and Agnes Graham, doing business as the Graham Ship Repair Co., was received in the office of the Collector of Internal Revenue at San Francisco, California, on December 11, 1946. The Collector issued Notice and Demand for payment of said taxes to Warren C. Graham and Agnes Graham, the taxpayers, on December 9, 1946.

The Commissioner of Internal Revenue's December, 1946, Supplemental Assessment List, Account No. 350543, carrying an assessment of penalties imposed upon Warren C. Graham and Agnes Graham in the sum of \$250.00 was received in the office of the Collector of Internal Revenue at San Francisco, California, on the 13th day of January, 1947. The Collector issued a Notice and Demand for the payment of said penalties to Warren C. Graham and Agnes Graham, the taxpayers, on December 9, 1946.

IV.

That no part of said withholding taxes, penalties and interest was paid within ten days of the issuance of said Notices and Demands for payment.

On December 9, 1946, the Collector of Internal Revenue filed a Notice of Lien securing the payment of said withholding taxes, penalties and interest assessed against Warren C. Graham and Agnes Graham upon the Commissioner's December, 1946, Special Number 2 List, in the office of the County Recorder of Alameda County, State of California.

V.

That subsequent to the filing of said Notices of Tax Liens the Collector of Internal Revenue at San Francisco, California, has made collections from Warren C. Graham and Agnes Graham in the amount of \$202,998.89 and applied said collection to the payment of said withholding taxes.

The withholding taxes assessed against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Co., for the third quarter of the year 1946 upon the Commissioner of Internal Revenue's December, 1946, Special No. 2, Line 12, Assessment List in the sum of \$14,192.92, inclusive of assessed penalties and interest, were abated in the sum of \$2,693.18 on September 30, 1947.

VI.

That there remains assessed, unpaid and outstanding against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Co., withholding taxes, penalties and assessed interest, for the four quarters of the year 1945 and the first three quarters of the year 1946 in the sum of \$337,014.78, exclusive of accruing interest and penalties.

VII.

That the liens in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Warren C. Graham and Agnes Graham, the taxpayers, on December 11, 1946, and January 13, 1947, respectively, the dates that the Commissioner's December, 1946, Special Assessment List, No. 2, and December, 1946, Supplemental List, were received in the office of the Collector of Internal Revenue at San Francisco, California, carrying said assessments of withholding taxes, penalties and interest against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Company, for the four quarters of the year 1945 and the first three quarters of the year 1946, and said liens became valid as to all of the world upon the recordation of notices thereof in the office of the County Recorder of Alameda County, State of California, on the 9th day of December, 1946, and the 21st day of May, 1947. That said liens are still outstanding and existing.

For a Fifth Cause of Action, Plaintiff Alleges as Follows:

I.

The allegations of the foregoing paragraphs I to XIII, inclusive, of this Complaint are here realleged and adopted.

II.

That the Commissioner of Internal Revenue as-

sessed Federal income taxes for the year 1942 against Warren C. Graham, 6035 Wood Drive, Oakland, California, in the amount of \$12,993.30.

III.

That the Commissioner of Internal Revenue's Assessment List carrying the assessment of said 1942 income taxes against Warren C. Graham was received in the office of the Collector of Internal Revenue on March 23, 1945.

IV.

That \$1,336.93 of the said tax has been paid and that \$11,656.37, together with penalties and interest, as provided by law, remains assessed, outstanding and unpaid.

V.

That the Collector of Internal Revenue at San Francisco, California, filed a Notice of Lien securing the payment of said 1942 income taxes assessed against Warren C. Graham in the office of the County Recorder of Alameda County, State of California, on the 10th of August, 1946.

VI.

That a tax lien in favor of the United States arose upon all of the property and rights to property, whether real or personal, including the above-described real and personal property of Warren C. Graham, the taxpayer, on March 23, 1945, the date the Collector of Internal Revenue received the Commissioner's Assessment List carrying the said assessment of 1942 income taxes against Warren

C. Graham, and said lien became valid as to all the world upon the recordation of notice thereof in the office of the County Recorder of Alameda County, State of California, on the 10th day of August, 1946. That said lien is still outstanding and existing.

Wherefore the Plaintiff prays:

1. That at the term next after the parties to the above-entitled proceeding have been duly notified thereof, unless otherwise ordered by the Court, the Court proceed to adjudicate all matters involved herein and finally determine the merits of all claims to and liens upon the property and rights to property in this Complaint above described, and that the Court decree that the Plaintiff, United States of America, has first, prior and paramount liens upon the following-described real and personal property, to wit, that certain real property situated, lying and being in the City of Oakland, County of Alameda, State of California, consisting of the residence located at 6035 Wood Drive, in the said city, and more particularly described in Paragraph XII of this Complaint, which is incorporated by reference in this prayer to the same force and effect as if fully set forth herein, together with the furniture and furnishings located in said residence and upon said real property, and that said liens consist of the following:

(a) A lien dating from the 23rd day of March, 1945, securing payment of 1942 income and excess

profits taxes assessed against W. C. Graham as the transferee of Kincaid Company, in the sum of \$16,-656.37, together with interest thereon at the rate of 6 per cent per annum from the 27th day of March, 1945.

(b) A lien dating from the 11th day of May, 1945, securing payment of the 1942 income and excess profits taxes assessed against Agnes Bourke Graham as transferee of the Kincaid Company, in the sum of \$16,773.02, together with interest thereon at the rate of 6 per cent per annum from the 21st day of May, 1945.

(c) A lien dating from the 1st day of August, 1949, securing the payment of 1945 and 1946 Federal income taxes assessed against Warren C. and Agnes B. Graham, in the amount of \$1,139,375.68, together with interest thereon at the rate of 6 per cent per annum from the 1st day of August, 1949, and a negligence penalty equal to 5% of the said principal amount for failure to pay said tax within ten days after Notice and Demand so to do.

(c) A lien dating from the 6th day of December, 1946, securing payment of Federal withholding taxes for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946, assessed against Warren C. Graham and Agnes Graham, doing business as Graham Ship Repair Company, and now unpaid, in the sum of \$337,014.78, together with interest upon the sum of \$336,764.78 at the rate of 6 per cent per annum

from the 9th day of December, 1946, and upon the sum of \$250.00 at the rate of 6 per cent per annum from the 13th day of January, 1947, and a negligence penalty equal to 5 per cent of said principal amounts for failure to pay said tax within ten days after Notice and Demand so to do.

(e) A lien dating from the 3rd day of March, 1945, securing the payment of 1942 Federal income taxes assessed against Warren C. Graham, in the sum of \$11,656.37, together with interest thereon at the rate of 6 per cent per annum from the day of, 1945, and a negligence penalty equal to 5% of said principal amount for failure to pay said tax within ten days after Notice and Demand so to do.

2. That the Court decree a sale of the above-described real and personal property and rights to property by the United States Marshal for the Northern District of California, and a distribution of the proceeds of such sale according to the findings of the Court in respect to the interest of the parties and of the United States.

3. That the Court award judgment to the United States and against the defendants, Warren C. Graham and Agnes Bourke Graham, for its costs in this action incurred.

4. For such other and further relief as to the Court may seem meet, just and equitable in the premises.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ MACKLIN FLEMING,
Assistant United States
Attorney;

/s/ PAUL E. ANDERSON,
Special Attorney, Bureau of
Internal Revenue.

[Endorsed]: Filed August 17, 1951.

[Title of District Court and Cause.]

AMENDMENT TO COMPLAINT

Comes now the plaintiff, United States of America, pursuant to a Stipulation by and between the said plaintiff and those defendants that have filed a response to the Complaint of the said plaintiff, and by way of amending its Complaint for foreclosure of Federal tax liens heretofore filed, alleges as follows:

I.

That paragraph III of the Fifth Cause of Action on page 11 of the said Complaint be amended by adding the following allegation thereto:

“The said Collector issued Notice and Demand for payment of the said taxes to Warren C. Graham, the taxpayer, on March 27, 1945.”

II.

That paragraph (e) of the prayer for relief on page 13 of the said Complaint be amended to state as follows:

“A lien dating from the 23rd day of March, 1945, securing the payment of 1942 Federal Income taxes assessed against Warren C. Graham in the sum of \$11,656.37, together with interest thereon at the rate of 6 per cent per annum from the 27th day of March, 1945, and a negligence penalty equal to 5 per cent of said principal amount for failure to pay said tax within ten days after Notice and Demand so to do.”

Wherefore, the plaintiff prays that it be granted all of the relief against the above defendants heretofore requested in its Complaint for foreclosure of Federal tax liens.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney;

/s/ CHARLES ELMER COLLETT,
Assistant U S Attorney;

/s/ PAUL E. ANDERSON,
Special Attorney,
Bureau of Internal Revenue.

[Endorsed]: Filed January 2, 1952.

[Title of District Court and Cause.]

ANSWER OF DEFENDANTS WARREN C.
GRAHAM, AGNES B. GRAHAM, CATHER-
INE YOUNG COBB and J. PRESTON COBB

Come now defendants Warren C. Graham and
Agnes B. Graham his wife, and Catherine Young

Cobb and J. Preston Cobb, her husband, and answering Plaintiff's complaint on file herein admit, deny and allege as follows, to wit:

I.

Answering Paragraph XII on pages 3 and 4, these defendants deny that Defendants Warren C. Graham and Agnes B. Graham were the owners or either of them was the owner of the property therein described at the time the Federal Tax Liens set forth in Plaintiff's complaint arose and in this regard allege that Defendant Catherine Young Cobb was the owner of said property at all times pertinent to this action and now is the owner thereof;

II.

Further answering said Paragraph XII, deny that Defendants Warren C. Graham and Agnes B. Graham, or either of them were at the times therein set forth the owners of the furniture and furnishings located in said residence and in this regard allege that Catherine Young Cobb was at all of said times and now is the owner of said furniture and furnishings;

III.

Answering Paragraph XIII on page 4, Defendant Catherine Young Cobb admits that she claims a right, title and interest in and to said real and personal property; denies that the same is junior and/or inferior and/or subordinate to the tax liens of Plaintiff, set forth in said complaint;

IV.

Answering Paragraph I of Plaintiff's first cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

V.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's first cause of action and basing their denial on that ground deny each and every, all and singular, generally and specifically, the allegations therein contained;

VI.

Answering Paragraph VI of the first cause of action, deny that plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

VII.

Answering Paragraph I of the second cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

VIII.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's second cause

of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

IX.

Answering Paragraph VI of the second cause of action, deny that plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

X.

Answering Paragraph I of the third cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

XI.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's third cause of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

XII.

Answering Paragraph VI of the third cause of action, deny that Plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described,

for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

XIII.

Answering Paragraph I of Plaintiff's fourth cause of action, defendants hereby refer to and incorporate herein Paragraphs I, II and III of this answer as hereinabove set forth in full;

XIV.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's fourth cause of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

XV.

Answering Paragraph VII of Plaintiff's fourth cause of action, deny that Plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

XVI.

Answering Paragraph I of the fifth cause of action, defendants hereby refer to and incorporate Paragraphs I, II and III of this answer as hereinabove set forth;

XVII.

Allege that they have no information or belief upon the subject with which to answer the allegations of Paragraph III of Plaintiff's fifth cause of action and basing their denial on that ground, deny each and every, all and singular, generally and specifically, the allegations therein contained;

XVIII.

Answering Paragraph VI of Plaintiff's fifth cause of action, deny that Plaintiff has a tax lien on the property described in Paragraph XII of the complaint or upon either the real property therein described or the personal property therein described, for the reason that said property is and was at the times herein specified the property of Defendant Catherine Young Cobb;

XIX.

By way of further answer to Plaintiff's complaint and answering specifically Paragraphs IV of the first cause of action, IV of the second cause of action, IV of the third cause of action, V and VI of the fourth cause of action and IV of the 5th cause of action, defendants allege that in addition to the payments mentioned in Plaintiff's complaint the sum of Five Hundred and Eleven Thousand Dollars (\$511,000.00) was paid on account of the various amounts covered by the liens of Plaintiff; that these defendants have no information or belief as to which of the various claims of Plaintiff this amount was credited.

Wherefore, Defendants and each of them pray judgment:

And for a Further, Separate and Second Defense to Plaintiff's complaint on file herein Defendants and each of them allege that the causes of action set forth in Plaintiff's complaint are barred by laches and by the provisions of Sections 275, 276 (c) and 3671 I.R.C. Title 26, U.S.C.

Wherefore, Defendants and each of them pray judgment:

And for a Further, Separate and Third Defense to Plaintiff's complaint on file herein Defendants and each of them allege that in the month of October, 1951, Defendants Warren C. Graham and Agnes B. Graham, his wife, submitted formal offers in compromise to the Bureau of Internal Revenue of the United States of America covering all of the causes of action set forth in Plaintiff's complaint and the entire subject matter thereof; that Defendants are informed and believe that said offers and compromise were referred to the Commissioner of Internal Revenue in Washington, D. C., for final action and that said offers are still pending; that if said offers and compromise are accepted the trial of this action would be an idle act and all of the issues presented by Plaintiff's complaint and this answer would be moot.

Wherefore, Defendants and each of them pray that Plaintiff take nothing by its complaint on file herein; that they be dismissed with their costs of

suit and for such other and further relief as to the Court may seem proper in the premises.

WAGENER and BRAILSFORD,

/s/ AUGUSTIN DONOVAN,

Attorneys for Defendants, Warren C. Graham,
Agnes B. Graham, Catherine Young Cobb, and
J. Preston Cobb.

Duly verified.

[Endorsed]: Filed May 15, 1952.

In the United States District Court in and for the
Northern District of California, Southern Division

Civil No. 30821

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN C. GRAHAM, et al.,

Defendants.

STATE OF CALIFORNIA,

Plaintiff in Intervention,

vs.

UNITED STATES OF AMERICA, WARREN C.
GRAHAM, et al.,

Defendants in Intervention.

SECOND AMENDMENT TO COMPLAINT

Comes now plaintiff United States of America,
pursuant to leave of court, and by way of second

amendment to its complaint for foreclosure of Federal tax liens heretofore filed, alleges for a Sixth Cause of Action as follows:

I.

The allegations of paragraphs I to XIII, pages 1 to 5, of the original complaint are here realleged and adopted.

II.

On October 4, 1945, defendants Warren C. Graham and Agnes B. Graham acquired title to, and became the owners in joint tenancy of, the real property described in paragraph XII, pages 3 and 4, of the original complaint. Thereafter defendants Warren C. Graham and Agnes B. Graham conveyed record title to said property to defendant Frank Hansen without a fair consideration and with the intent to hinder, delay, and defraud plaintiff in the collection of the Federal taxes which are the subject of the five causes of action set forth in the original complaint, which causes of action are herein adopted by reference.

III.

In the event that defendants Warren C. Graham and Agnes B. Graham made other conveyances of said property, which conveyances are not of record, each and every such conveyance was made without a fair consideration and with the intent to hinder, delay, and defraud plaintiff in the collection of said Federal taxes.

IV.

The conveyance to defendant Frank Hansen and

any other conveyances by defendants Warren C. Graham and Agnes B. Graham were made at a time when defendants Warren C. Graham and Agnes B. Graham were, or were thereby rendered, insolvent.

V.

Said conveyances were made at a time when defendants Warren C. Graham and Agnes B. Graham intended to, or believed that they would, incur debts beyond their ability to pay as they matured.

VI.

Said conveyances were made at a time when defendants Warren C. Graham and Agnes B. Graham were engaged, or were about to engage, in a business or transaction for which the property remaining in their hands after said conveyances was an unreasonably small capital.

VII.

Defendant Frank Hansen, at the request of defendants Warren C. Graham and Agnes B. Graham, conveyed record title to said property to their daughter, defendant Catherine Young Cobb, without a fair consideration. Defendant Catherine Young Cobb was not a bona fide purchaser of said property and took title thereto with the intent to hinder, delay and defraud plaintiff in the collection of the Federal taxes which are the subject of the five causes of action set forth in the original complaint and adopted herein by reference.

Wherefore, plaintiff prays that in addition to the other relief requested in the original complaint, each

and every conveyance of the property described in paragraph XII, pages 3 and 4, of the original complaint, from defendants Warren C. Graham and Agnes B. Graham to defendant Frank Hansen and to any other grantees, and the conveyance from defendant Frank Hansen to defendant Catherine Young Cobb, be set aside as a fraud on plaintiff as a creditor of defendants Warren C. Graham and Agnes B. Graham, and that said property be sold free and clear of said conveyances in satisfaction or partial satisfaction of the tax liens alleged in the first five causes of action set forth in the original complaint.

/s/ LLOYD H. BURKE,

United States Attorney,
Attorney for Plaintiff.

Affidavit of service by mail attached.

[Endorsed]: Filed March 29, 1954.

[Title of District Court and Cause.]

ANSWER TO SECOND AMENDMENT
TO COMPLAINT

Come now defendants Warren C. Graham and Agnes B. Graham, his wife, and Catherine Young Cobb and J. Preston Cobb, her husband, and, answering Plaintiff's Second Amendment to Complaint on file herein, admit, deny and allege as follows, to wit:

I.

Answering Paragraph I these defendants refer to, incorporate herein and adopt each and every provision of Paragraphs I, II and III of their answer to the original complaint on file herein.

II.

Deny each and every, all and singular, generally and specifically the allegations of Paragraph II, commencing with the word "Thereafter" on line 4, and Paragraphs III, IV, V, VI and VII.

III.

Further answering said Second Amendment to Complaint, Defendants and each of them refer to and incorporate herein each and every admission, denial and allegation of their answer to the complaint heretofore filed herein.

Wherefore, Defendants and each of them pray that Plaintiff take nothing by its Second Amendment to Complaint on file herein; that they be dismissed with their costs of suit and for such other and further relief as to the Court may seem proper in the premises.

WAGENER and BRAILSFORD,

/s/ AUGUSTIN DONOVAN,

Attorneys for Defendants, Warren C. Graham,
Agnes B. Graham, Catherine Young Cobb, and
J. Preston Cobb.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed April 14, 1954.

[Title of Disrict Court and Cause.]

ANSWERS OF DEFENDANT AGNES B. GRAHAM TO WRITTEN INTERROGATORIES

Defendant, Agnes B. Graham, hereby makes the following responses to the written interrogatories propounded by Plaintiff:

I.

1. My husband told me the price was Thirty-three Thousand, Five Hundred Dollars (\$33,500.00).

2. Warren C. Graham and the Central Bank of Oakland, California.

3. Carroll M. McKee and Opal L. McKee.

4. Property purchased by Warren C. Graham while I was in New York, without my knowledge.

5. Warren C. Graham and Agnes B. Graham.

6. Until May 16, 1946.

7. Catherine Young Cobb, daughter of Warren C. Graham.

II.

1. Three Thousand, Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) paid by Catherine Young Cobb, daughter of Warren C. Graham, on May 16, 1946. Property held in trust by Frank Hansen for Catherine Young Cobb.

2. Catherine Young Cobb, daughter of Warren C. Graham, and step-daughter of Agnes B. Graham.

3. Warren C. Graham.

4. August 6, 1946.

5. No knowledge.

6.

- a. No knowledge.
- b. No knowledge.
- c. No knowledge.
- d. No knowledge.
- e. No knowledge.

7. None.

8. No knowledge except for Catherine Young Cobb.

9.

- a. No knowledge.
- b. No knowledge.
- c. No knowledge.
- d. No knowledge.
- e. No knowledge.

10. No knowledge.

11. No knowledge.

12. No knowledge.

13. No knowledge.

14. No knowledge.

15. No knowledge.

16. No knowledge.

17. No knowledge.

18. No knowledge.

19. Six years later, as of January 17, 1952, filed bankruptcy petition with husband in the District Court of the United States Northern District of California, Case No. 40472. Discharged May 26, 1953.

III.

- 1. No knowledge.
- 2. No knowledge.
- 3. Step-daughter.

4. Three Thousand, Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) to Warren C. Graham, my husband.

5. No knowledge.

6. No knowledge.

7. No.

8. May 16, 1943. Was in possession when deed was executed.

9. No direct knowledge.

10.

a. Several discussions at 6035 Wood Drive, Oakland, California, and at Hotel Statler, Washington, D. C., between January 15, 1946, and April 1, 1946, by and between Warren C. Graham and Agnes B. Graham; next on or about April 2, 1946, by and between Warren C. Graham, Agnes B. Graham and Catherine Young Cobb.

b. Answered under "a" above.

c. Answered under "a" above.

d. Warren C. Graham and Agnes B. Graham until May 16, 1946, when sold to Catherine Young Cobb. Held in trust by Frank Hansen from August 6, 1946, to May 20, 1948, during absence of Catherine Young Cobb from California.

e. No knowledge.

Dated: June 14, 1954.

/s/ AGNES B. GRAHAM.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of District Court and Cause.]

ANSWERS OF DEFENDANT WARREN C. GRAHAM TO WRITTEN INTERROGATORIES

Defendant Warren C. Graham hereby makes the following responses to the written interrogatories propounded by Plaintiff:

I.

1. Thirty-three Thousand Five Hundred Dollars (\$33,500.00).
2. Warren C. Graham.
3. Carrol M. McKee and Opal I. McKee.
4. Property purchased by Warren C. Graham, accompanied by daughter, Catherine Young Cobb, in absence of Mrs. Agnes B. Graham, who was in New York City. Purchased by Warren C. Graham on September 7, 1945, with One Thousand Dollars (\$1,000.00) down payment and checks and cash on September 12, 1945, and October 4, 1945, totaling Thirteen Thousand, Five Hundred Dollars (\$13,500.00), together with Twenty Thousand Dollars (\$20,000.00) First Deed of Trust of Central Bank of Oakland, California.
5. Warren C. Graham and Agnes B. Graham.
6. Until May 16, 1946.
7. Catherine Young Cobb, daughter of Warren C. Graham, on May 16, 1946.

II.

1. Three Thousand Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) by daughter of

Warren C. Graham, Catherine Young Cobb, on May 16, 1946.

2. Catherine Young Cobb, daughter of Warren C. Graham.

3. Warren C. Graham.

4. August 6, 1946.

5. Warren C. Graham on August 6, 1946.

6.

a. Three Thousand Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32).

b. To hold in trust by Frank Hansen for daughter of Warren C. Graham, Catherine Young Cobb, until she returned to California.

c. Letter from Frank Hansen agreeing to hold said property in trust for Catherine Young Cobb, and to turn property over to her. In possession of Warren C. Graham, 4255 Howe Street, Oakland 11, California.

d. None.

e. Answered under b and c.

7. None.

8. Yes; and in writing.

9.

a. Catherine Young Cobb, daughter of Warren C. Graham.

b. Any oral instructions given to Frank Hansen on August 6, 1946.

c. Frank Hansen and Warren C. Graham at Graham Ship Repair Co., 501 First Street, Oakland, California.

d. At 501 First Street, Oakland, California, at office of Graham Ship Repair Company.

e. May 16, 1946.

f. May 16, 1946.

10. No. Definitely not. Furthermore, had the moneys collected by ex-collector James F. Smythe and Deputy Collector Daniel F. Cunningham from the assets of Warren C. Graham been applied to the Internal Revenue Account of Warren C. Graham, these taxes mentioned herein would have been paid in full.

11. In business transactions in excess of One Million Dollars (\$1,000,000.00) assets at time of transfer in excess of liabilities.

12. None. Over a year later, in early 1948, or late 1947, an assignment was made to the Central Bank, Oakland, California, of some airplane engines, held as collateral for a loan.

13. No.

14. No.

15. No.

16. Would require employment of accountant to show distribution in several enterprises.

17. Answered under No. 16, above.

18. Over a year later, in early 1948, or late 1947, an assignment was made to the Central Bank of Oakland, California, of some airplane engines, valued at Two Million Five Hundred Thousand Dollars (\$2,500,000.00) and held by them as collateral for a loan.

19. Six years later, on January 17, 1952, filed bankruptcy petition in the District Court of the United States, Northern District of California, Case No. 40473. Discharged May 26, 1953.

III.

1. Warren C. Graham.
2. No. I do not believe so.
3. Yes.
4. Yes.
5. Three Thousand Three Hundred Thirty-three and 32/100ths Dollars (\$3,333.32) advanced to Warren C. Graham at Kincaid Mfg. Co., 17 East 42nd Street, New York 17, New York. Used money in business.
6. Records of Kincaid Mfg. Co., where daughter, Catherine Young Cobb, worked as Research Assistant at Ten Thousand Dollars (\$10,000.00) per year. In possession of Warren C. Graham, 4255 Howe Street, Oakland 11, California.
7. No.
8. May 16, 1946. Was already in possession at time of this deed.
9. None except those mentioned herein.
10.
 - a. Several discussions at 6035 Wood Drive, Oakland, California, and at Hotel Statler, Washington, D. C., between January 15, 1946, and April 1, 1946, by and between Warren C. Graham and Agnes B. Graham; next, at 6035 Wood Drive, Oakland, California, between Warren C. Graham, Agnes B. Graham and Catherine Young Cobb, on or about April 2, 1946; and third between Warren C. Graham at 6035 Wood Drive, Oakland, California, and

Catherine Young Cobb at Valdosta, Georgia, on May 16, 1946.

b. Answered under "a" above.

c. Answered under "a" above.

d. Warren C. Graham and Agnes B. Graham until until May 16, 1946, when sold to daughter, who at this time had returned East to join husband coming back from overseas army service; held in trust by Frank Hansen from August 6, 1946, to May 20, 1948, about the time of Catherine Young Cobb's return to California.

e. Not considered necessary at the time.

Dated: June 14, 1954.

/s/ WARREN C. GRAHAM.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of Disrict Court and Cause.]

ANSWERS OF DEFENDANT AGNES B. GRAHAM TO PLAINTIFF'S REQUEST FOR ADMISSIONS

Defendant Agnes B. Graham hereby makes the following responses to the Request for Admissions Propounded by Plaintiff:

1. No. Was signed under duress while my husband, Warren C. Graham, was in McNeil Island Federal Penitentiary, McNeil Island, Washington. The photostat of document shows it is fraudulent in that, after being signed by me during the first half of 1951, the signing date was altered and changed by Internal Revenue, or others, to November 21, 1950.

2. Same Answer as "1" above.

Dated: June 14, 1954.

/s/ AGNES B. GRAHAM.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of District Court and Cause.]

ANSWERS OF DEFENDANT WARREN C.
GRAHAM TO PLAINTIFF'S REQUEST
FOR ADMISSIONS

Defendant Warren C. Graham hereby makes the following responses to the Request for Admissions Propounded by Plaintiff:

1. Yes.

2. No. Was signed by Warren C. Graham under duress from Internal Revenue at McNeil Island

Federal Penitentiary. The photostat of document shows it is fraudulent in that, after being signed at McNeil Island Penitentiary during the first half of 1951, the signing date was altered and changed by Internal Revenue, or others to November 21, 1950.

3. No. Same answer as "2" above.

Dated: June 14, 1954.

/s/ WARREN C. GRAHAM.

Duly Verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed June 15, 1954.

[Title of District Court and Cause.]

THIRD AMENDMENT TO COMPLAINT

Comes now the plaintiff, the United States of America, and pursuant to a prior oral motion to amend the pleadings to conform to the evidence, which motion was made during the course of the trial, realleges and adopts all previous allegations and causes of action as set forth in the original complaint and the two previous amendments thereto with the following specific amendments:

1. The allegations of paragraphs III and VI of the First Cause of Action of the original complaint are hereby amended to the extent of substituting

the date of March 26, 1945, for the date of March 23, 1945, wherever the latter (March 23, 1945), date appears in the said paragraphs of the original complaint.

2. The allegations of paragraph IV of the First Cause of Action of the original complaint are hereby amended by substituting therefor the following allegations:

That subsequent to filing the notices of tax liens, the Collector of Internal Revenue at San Francisco, California, has made collections from Warren C. Graham in the amount of \$8,587.51 and applied said collections to the payment of said income and excess profits taxes.

That there remains assessed, unpaid and outstanding against Warren C. Graham for 1942 income and excess profits taxes a total tax liability of \$8,068.86, plus interest as provided by law from March 27, 1945.

3. Paragraphs III and VI of the Second Cause of Action of the original complaint are hereby amended to the extent of substituting the date of May 14, 1945, for the date of May 11, 1945, wherever the latter date appears in said paragraphs of the original complaint.

4. Paragraphs V and VI of the Third Cause of Action of the original complaint are hereby amended to the extent of substituting the date of December 12, 1949, for the date of November 30,

1949, wherever the latter date appears in said paragraphs of the original complaint.

5. The allegations of paragraph V of the Fourth Cause of Action of the original complaint are hereby amended to the extent of substituting the amount of \$203,505.12 for the amount of \$202,998.89 where the latter amount appears in said paragraph of the original complaint.

6. The allegations of paragraph VI of the Fourth Cause of Action of the original complaint are hereby amended to the extent of substituting the amount of \$337,918.01 for the amount of \$337,014.78 where that amount appears in said paragraph of the original complaint.

7. The allegations of the Fifth Cause of Action are hereby withdrawn and abandoned.

The prayers of the previous complaint and amendments thereto are completely amended as follows:

Wherefore, the plaintiff prays:

1. That the liens as set forth in the First, Second and Fourth Causes of action be adjudged first and prior to all other claims or interests of each and every defendant; and that the liens of the United States as set forth in the Third Cause of Action be accorded their proper priority in relation to the lien claims asserted by the defendants State of California, County of Alameda and City of Oakland against the property here involved.

2. That the Court decree a sale of the previously described real and personal property by the United States Marshal for the Northern District of California, and a distribution of the proceeds of such sale be made to the United States in accordance with its priority of liens.

3. That the Court award a deficiency judgment to the United States and against defendants Warren C. Graham and Agnes B. Graham in the amount of their tax liabilities to the United States as set forth in the First, Second, Third and Fourth Causes of Action, less the amount realized from the foreclosure sale.

4. That the Court award judgment to the United States and against the defendants Warren C. Graham and Agnes B. Graham for its costs incurred in this action.

5. That, in addition to the other relief requested, each and every conveyance of the property described in the allegations of paragraph XII of the original complaint and here realleged and adopted, from defendants Warren C. Graham and Agnes B. Graham to defendant Frank Hansen and to any other grantees, and the conveyance from defendant Frank Hansen to defendant Catherine Young Cobb, be set aside as a complete sham and also as a fraud on the plaintiff as a creditor of defendants Warren C. Graham and Agnes B. Graham, and the said property be sold free and clear of said conveyances in satisfaction or partial satisfaction of the tax

liens alledged in the first four causes of action set forth in the original complaint.

LLOYD H. BURKE,

United States Attorney,

By /s/ CHARLES ELMER COLLETT,

Assistant United States At-
torney,

/s/ ALONZO W. WATSON, JR.,

Attorney, Office of Regional Counsel, Internal
Revenue Service.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 22, 1955.

[Title of District Court and Cause.]

ORDER

It Is Hereby Ordered that the complaint in this action be amended to conform to the proof in accordance with the Third Amendment to the Complaint filed by plaintiffs on August 22, 1955, and that the Complaint in Intervention be amended in accordance with the stipulation regarding same filed on August 16, 1955.

It Is Further Ordered that the plaintiff, United States of America, the plaintiff in intervention, the State of California, and the defendants, County of Alameda and City of Oakland, have judgment on their liens in the following order which shall constitute the priority of the liens:

(1) In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the first cause of action of the complaint;

(2) In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the second cause of action of the complaint;

(3) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the fourth cause of action of the complaint;

(4) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham, in the sum of \$10,586.83, plus interest from August 1, 1955, at the rate of one-half of one per cent per month in \$6,145.17 until paid;

(5) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$2,293.28, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,134.14 until paid.

(6) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$3,639.20, plus interest from

August 1, 1955, at the rate of one-half of one per cent per month on \$1,963.75 until paid;

(7) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$1,139,375.68, plus interest at six per cent per annum from date of notice and demand until paid, as set out in the third cause of action of the complaint;

(8) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid;

(9) In favor of the County of Alameda and the City of Oakland against defendants Warren C. Graham and Agnes B. Graham in the sum of \$835.70, as set out in paragraph 10 of the Stipulation filed herein on August 18, 1955.

It Is Further Ordered that the property described in Paragraph XII of the complaint be sold by the United States Marshal free of the conveyances in issue here but subject to the Reservations granted to the City of Oakland as set forth in the stipulation of facts filed herein on August 16, 1955, the proceeds of said sale to be applied to the payment of the above liens according to their priority.

It Is Further Ordered that judgment be entered as prayed for in Paragraph 5 of the prayer of the Third Amendment to the complaint filed on August 22, 1955.

Findings of fact, conclusions of law, decree of sale, and judgment to be prepared by plaintiff.

Dated: August 25, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

[Endorsed]: Filed August 26, 1955.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. This is an action to foreclose Federal tax liens brought at the request of the Attorney General of the United States and authorized and sanctioned by the Commissioner of Internal Revenue.

2. The Federal tax liens arose as a result of the assessment of tax liabilities against defendants Warren C. Graham and Agnes B. Graham, husband and wife, residing in the City of Oakland, County of Alameda, State of California.

3. The assessed Federal tax liabilities are as follows:

a. The Commissioner of Internal Revenue assessed Federal income and excess profits taxes and accrued interest for the year 1942 in the amount of \$16,656.37 against Warren C. Graham as a transferee of the Kincaid Company. On March 26, 1945,

the Collector of Internal Revenue for the Second District of New York received the assessment list carrying assessments of the 1942 income and excess profits taxes against Warren C. Graham. On March 27, 1945, notice and demand was served upon Warren C. Graham for these tax liabilities.

On May 2, 1946, the Collector of Internal Revenue for the Second District of New York transferred this assessed tax liability to the Collector in San Francisco; and, on May 9, 1946, the Collector in San Francisco placed this liability on his current tax list. On August 10, 1946, the Collector in San Francisco caused a notice of tax lien in the amount of \$16,656.37 to be recorded by the County Recorder of Alameda County. The present outstanding balance of this assessed and recorded tax liability is \$8,068.86 exclusive of interest from the date of notice and demand.

b. The Commissioner of Internal Revenue in May of 1945 assessed Federal income and excess profits taxes and interest then accrued for the year 1942, in the amount of \$16,773.02, against Agnes B. Graham, as a transferee of the Kincaid Company. On May 14, 1945, the Collector of Internal Revenue for the Second District of New York received the assessment list carrying the assessments of the 1942 income and excess profits tax liabilities against Agnes B. Graham. On May 21, 1945, there was served upon Agnes B. Graham a notice and demand for payment of this tax liability. On May 2, 1946, the Collector of Internal Revenue for the

Second District of New York transferred these assessed tax liabilities to the Collector in San Francisco. On May 9, 1946, the Collector in San Francisco placed this liability on his current tax list.

On August 10, 1946, the Collector in San Francisco caused a notice of tax lien in the amount of \$16,773.02 to be recorded by the County Recorder of Alameda County. The present outstanding balance of this assessed and recorded tax liability is \$16,773.02, exclusive of interest from the date of notice and demand.

c. The Commissioner of Internal Revenue in December of 1946 assessed withholding and Federal insurance contributions taxes, penalties and interest for the four quarters of the calendar year 1945 and the first three quarters of the calendar year 1946 in the aggregate amount of \$542,706.95 against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company.

On December 6, 1946, the Collector of Internal Revenue in San Francisco received a telegraphic jeopardy assessment list carrying the above-designated assessments. On December 9, 1946, the Collector served a notice and demand for payment; and, on the same day, caused a notice of lien covering these taxes to be recorded by the County Recorder of the County of Alameda. The present outstanding balance of this assessed and recorded tax liability is \$365,040.50, exclusive of interest on the sum of \$337,918.01 from the date of notice and demand.

d. The Commissioner of Internal Revenue in July of 1949 assessed Federal income taxes for the years 1945 and 1946 against Warren C. Graham and Agnes B. Graham in the amount of \$1,139,375.86. On August 1, 1949, the Collector in San Francisco received the assessment list carrying the assessment for 1945 and 1946 income taxes against Warren C. Graham and Agnes B. Graham.

On August 1, 1949, and on September 2, 1949, the Collector of Internal Revenue served on Warren C. and Agnes B. Graham notices and demands for payment of this liability. On December 12, 1949, the Collector caused a notice of tax lien in the amount of \$1,139,375.68 to be recorded by the County Recorder of Alameda County. The present outstanding balance of this assessed and recorded tax liability is \$1,139,375.68, exclusive of interest from the date of notice and demand.

4. The above-described Federal tax liabilities are asserted as liens against the interests of Warren C. Graham and Agnes B. Graham in the following described real property located in Alameda County:

Beginning at the point of intersection of the southeastern line of Wood Drive with the western line of lot 7 in block "H", as said drive, lot and block are shown on the map of "Montclair Estates", hereinafter referred to; running thence along the said line of Wood Drive the four following courses and distances: Northeasterly along the arc of a curve to the left

with a radius of 185.0 feet, a distance of 26.79 feet; north $61^{\circ} 45'$ east 130.94 feet; northeasterly along the arc of a curve to the right with a radius of 170.00 feet, a distance of 93.22 feet and northeasterly along the arc of a compound curve to the right with a radius of 44.00 feet, a distance of 17.65 feet to a point on the southeastern line of said lot 7; thence along the southern, southwestern and western lines of Wood Drive, as said drive is shown on the map of "Montclair Acres", hereinafter referred to, the four following courses and distances: easterly and southeasterly along the arc of a curve to the right with a radius of 44.00 feet, a distance of 61.51 feet; south $16^{\circ} 15'$ West 92.00 feet; southerly along the arc of a curve to the left with a radius of 225.00 feet, a distance of 76.35 feet and south $3^{\circ} 11' 30''$ east 20.14 feet; thence leaving said western line of Wood Drive south $69^{\circ} 19' 27''$ west 163.45 feet to the southeastern corner of said lot 7; thence along the general southern boundary line of said block "H" the following seven courses and distances; north $6^{\circ} 03' 40''$ west 19.70 feet; north $65^{\circ} 31' 10''$ west 23.60 feet; south $57^{\circ} 44'$ west 74.67 feet; south $37^{\circ} 46' 10''$ west 110.27 feet; north $76^{\circ} 54'$ west 39.13 feet; north $16^{\circ} 15' 20''$ west 108.71 feet, and north $28^{\circ} 53' 40''$ west 10.56 feet; thence north $45^{\circ} 21'$ east 202.43 feet to a point on the said western line of lot 7; thence north $0^{\circ} 54' 40''$ east 37.90 feet to the point of beginning.

Being a portion of lots 6 and 6-“A” and all of lot 7 in block “H”, as said lots and block are shown on the map of “Montclair Estates, Oakland, Alameda County, California”, filed October 9, 1922, in book 3 of Maps, page 43, in the office of the County Recorder of Alameda County.

And being also a portion of lot 6 in block “G”, as said lot and block are shown on the map of “Montclair Acres, Oakland, Alameda County, California”, filed June 7, 1921, in book 7 of Maps, pages 86 and 87, in the office of the County Recorder of Alameda County.

This property is subject to a reserve for public utilities, five feet in width and running across the length of the property, which reserve was granted to the City of Oakland.

5. Warren C. Graham and Agnes B. Graham do not claim any present interest in the above property and they deny having any interest therein when the Federal tax liabilities arose.

6. Defendants Catherine Young Cobb and J. Preston Cobb are husband and wife. At the time this action was commenced they resided in the City of Oakland, County of Alameda, State of California.

7. Catherine Young Cobb is the daughter of Warren C. Graham. Legal title to the above-described property is in her name. A deed transfer-

ring the above-described real property from Frank Hansen, a single man, to Catherine Young Cobb, a married woman, was recorded in Alameda County on May 28, 1948. A deed transferring the above-described property from Warren C. and Agnes B. Graham, his wife, to Frank Hansen, a single man, was recorded in Alameda County on December 7, 1946. A deed transferring the above-described property from Carroll McKee and Opal Leota McKee, his wife, to Warren C. Graham and Agnes B. Graham was recorded on October 16, 1946.

8. The conveyance of the above-described real property from Warren C. Graham and Agnes B. Graham to Frank Hansen was a sham. The transfer was for the purpose of avoiding and defeating Federal tax liens. Warren C. Graham and Agnes B. Graham did not intend to divest themselves of the beneficial interest in the property and Frank Hansen did not intend to take the beneficial interest. Frank Hansen received title to the property and held title to the property for Warren C. Graham and Agnes B. Graham.

Defendant Frank Hansen was employed by the Graham Ship Repair Company. He was in 1945, 1946, 1947 and 1948 closely associated with Warren C. Graham. Other property owned by Warren Graham had been transferred to Frank Hansen and in previous court proceedings these transfers had been set aside. Frank Hansen's deposition was taken and was received in evidence along with various other exhibits. The substance of the deposition

and attached exhibit, with respect to the conveyance of the property to Frank Hansen, is that the purpose of such transfer was to avoid Federal tax liens. Frank Hansen did not otherwise plead or appear and his default is entered.

9. The conveyance of the above-described property from Frank Hansen to Catherine Young Cobb was a sham and made for the same purpose as was the conveyance from the Grahams to Hansen, namely, to conceal the Grahams' interest therein. In any event the transfer to Catherine Young Cobb was no more than a gift.

10. The defendant, State of California, is a corporate body politic. The State of California, through its subdivisions, the Department of Employment and the Board of Equalization, claims an interest in the above-described property by virtue of certain recorded certificates of lien. The facts relative to these claims, as set out in a stipulation of facts filed with the Court on August 16, 1955, are as follows:

a. On July 16, 1947, there was recorded in Alameda County Certificate of lien of the Department of Employment, No. 3193. On May 21, 1952, the above Certificate of Lien was rerecorded as Certificate of Lien No. 51607. These certificates covered unemployment insurance taxes (contributions) assessed against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company for the period from April 1, 1946, to

March 31, 1947. The liability, computed as of July 31, 1955, covered by the above-designated certificates is shown in the following table:

Contributions	\$ 6,190.40
Interest to date of recordation	316.82
Penalties	1,181.15
	<hr/>
Amount of Lien	\$ 7,688.37
Less credit adjustment	51.21
	<hr/>
	\$ 7,637.16
Additional interest to date of record-	
ation of Extension of Lien	1,782.10
	<hr/>
Amount of Extension Lien #51607..	9,419.26
Additional interest to 7/31/55.....	1,167.57
	<hr/>
Present Amount Due on Lien...	\$10,586.83

b. On May 3, 1948, there was recorded in Alameda County Certificate of Lien of the Board of Equalization, No. 9210. On April 7, 1953, this Certificate of Lien was rerecorded. These certificates covered sales and use taxes, penalties and interest assessed against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company for the period from January 1, 1945, to May 15, 1947. As of July 31, 1955, the amount due and delinquent was \$2,293.28.

c. On June 15, 1949, there was recorded in the County of Alameda Certificate of Lien of the Board

of Equalization, No. 10672. This Certificate of Lien was rerecorded on May 12, 1954. The Certificate covered sales and use tax, penalties and interest assessed against Warren C. Graham and Agnes B. Graham, doing business as California Plants Distillation Company for the period from March 1, 1947, to November 30, 1947. The amount due and delinquent as of July 31, 1955, is \$3,639.20.

d. On January 24, 1950, there was recorded in Alameda County a Certificate of Lien of the Department of Employment, No. 25234. On December 7, 1954, this Certificate of Lien was rerecorded as Certificate No. 79158. These certificates covered unemployment insurance taxes (contributions) assessed against Warren C. Graham and Agnes B. Graham, doing business as Graham Ship Repair Company for the period from April 1, 1946, to December 31, 1946. The tax liability, computed as of July 31, 1955, is shown in the following table:

Contributions	\$ 1.05
Interest to date of recordation22
Penalties	113.11
<hr/>	
Amount of Lien	\$114.38
Additional interest to date of recorda-	
tion of Extension of Lien.....	.32
<hr/>	
Amount of Extension Lien #79158....	\$114.70
Additional interest to 7/31/5503
<hr/>	
Present Amount Due on Lien	\$114.73

11. Defendant County of Alameda and defendant City of Oakland assert claims against the above-described property. The lien claims of both these defendants were set forth in a single stipulation which was filed with the Court. These claims are for property taxes, penalties and interests levied for the following fiscal years and in the following total amounts:

(a) Fiscal Year commencing July 1,	
1946	\$838.92
(b) Fiscal Year commencing July 1,	
1947	808.50
(c) Fiscal Year commencing July 1,	
1948	848.85
(d) Fiscal Year commencing July 1,	
1949	754.29
(e) Fiscal Year commencing July 1,	
1950	733.37
(f) Fiscal Year commencing July 1,	
1951	639.24

Catherine Young Cobb made payments on the liabilities listed above on the following dates and in the following amounts:

(a) March 31, 1953	\$ 925.63
Interest	167.35
(b) April 20, 1954	\$ 925.63
Interest	171.61
(c) April 22, 1955	\$1,019.57
Interest	107.92

The present outstanding balance of these liens as of August 16, 1955, is \$835.70.

Conclusions of Law

1. The liens of the United States, for tax liabilities assessed against Warren C. Graham and Agnes B. Graham for 1942 income and excess profits taxes, for 1945 and 1946 withholding and insurance contribution taxes and for 1945 and 1946 income taxes, arose, when on the following designated dates, the Collector received the assessment lists covering these assessments: (a) March 26, 1945, (b) May 14, 1945, (c) December 6, 1946, and (d) August 1, 1949.

2. When these liens arose they attached to all property and rights in property owned by Warren C. Graham and Agnes B. Graham; and, to all after-acquired property of these taxpayers. These liens, when they arose were good against all persons except mortgagees, pledgees, purchasers and judgment creditors. Neither Catherine Young Cobb or any of the other claimants come within the four categories of persons named-above; and, in any event, the liens of the United States which arose on March 26, 1945; May 14, 1945, and December 6, 1946, were recorded and became good even against the four classes named-above (before the property here involved was deeded to Catherine Young Cobb.)

3. The Federal tax liens that arose on March 26, 1945 and May 14, 1945, attached to the property here involved when that property, by deed recorded October 16, 1945, was acquired by Warren C. Graham and Agnes B. Graham. The Federal tax liens

of December 6, 1946, and August 1, 1949, attached to this particular property when they arose.

4. The United States of America, the State of California, the County of Alameda and the City of Oakland are entitled to judgments on their liens in the following order which shall constitute the priority of the liens:

a. In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from March 26, 1945, until paid;

b. In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from May 14, 1945, until paid;

c. In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per cent per annum on the sum of \$337,918.01 from December 9, 1946, until paid;

d. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham, in the sum of \$10,586.83, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$6,145.17 until paid;

e. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$2,293.28, plus interest from Au-

gust 1, 1955, at the rate of one-half of one per cent per month on \$1,134.14 until paid;

f. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$3,639.20, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,963.75 until paid;

g. In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$1,139,375.68, plus interest at six per cent per annum from August 1, 1949, until paid;

h. In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid;

i. In favor of the County of Alameda and the City of Oakland against defendants Warren C. Graham and Agnes B. Graham in the sum of \$835.70, plus interest from August 16, 1955, according to law.

5. The conveyance from Warren C. Graham and Agnes B. Graham to Frank Hansen, and the conveyance from Frank Hansen to Catherine Young Cobb were complete shams and were frauds on the creditors of Warren C. Graham and Agnes B. Graham. These conveyances are set aside and the property here involved is to be sold by the United States Marshal for the Northern District of Cali-

fornia free and clear of these conveyances and any other encumbrances except the reservation for public utilities granted to the City of Oakland. The proceeds of this sale, after deducting the Marshal's costs and commission, are to be applied in payment of the lien claims in accordance with their respective priorities as set out above. Any amounts so paid will be credited against the above judgments.

Dated: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Service of copy attached.

Lodged August 30, 1955.

[Endorsed]: Filed September 13, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 30821

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife; FRANK HANSEN, a Single Man; CATHERINE YOUNG COBB and J. PRESTON COBB, Her Husband; COUNTY OF ALAMEDA, State of California, a Municipal Corporation; CITY OF OAKLAND, State of California, a Municipal Corporation; CROFTS & ANDERSON, a Co-Partnership, et al.,

Defendants,

vs.

STATE OF CALIFORNIA,

Plaintiff in Intervention.

JUDGMENT

The above-entitled matter coming on regularly to be heard before this Court on the 17th day of August, 1955, without a jury, and the plaintiff appearing by its attorneys Lloyd H. Burke, United States Attorney; Charles Elmer Collett, Assistant United States Attorney, and Alonzo W. Watson, Jr., attorney in the office of the Regional Counsel, Internal Revenue Service, the defendants Warren C. Graham, Agnes B. Graham, Catherine Young Cobb

and J. Preston Cobb appearing by their attorneys Wagener & Brailsford, and the Court have heard the evidence and received and considered the stipulations as to facts entered into by the aforementioned plaintiffs and defendants through their respective attorneys and the defendants, the State of California, the County of Alameda and the City of Oakland, through their respective attorneys; and the Court being fully advised in the premise; now, in accordance with the order of the Court entered on August 26, 1955, it is hereby

Ordered, Adjudged and Decreed:

1. That the plaintiff the United States of America, the plaintiff in intervention, the State of California, and the defendants, County of Alameda and City of Oakland, be awarded judgment on their liens in the following order, which order shall constitute the priority of the liens.

(a) In favor of the United States against defendant Warren C. Graham in the sum of \$8,068.86, plus interest at six per cent per annum from March 26, 1945, until paid;

(b) In favor of the United States against defendant Agnes B. Graham in the sum of \$16,773.02, plus interest at six per cent per annum from May 14, 1945, until paid;

(c) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$365,040.50, plus interest at six per

cent per annum on the sum of \$337,918.01 from December 9, 1946, until paid;

(d) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham, in the sum of \$10,586.83, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$6,145.17 until paid;

(e) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$2,293.28, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,134.14 until paid;

(f) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$3,639.20, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1,963.75 until paid;

(g) In favor of the United States against defendants Warren C. Graham and Agnes B. Graham in the sum of \$1,139,375.68, plus interest at six per cent per annum from August 1, 1949, until paid;

(h) In favor of the State of California against defendants Warren C. Graham and Agnes B. Graham in the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid;

(i) In favor of the County of Alameda and the City of Oakland against defendants Warren C. Graham and Agnes B. Graham in the sum of

\$835.70, plus interest from August 16, 1955, according to law.

2. That the conveyances of record to Frank Hansen recorded on December 7, 1946, and Catherine Young Cobb recorded on May 28, 1948, are null and void.

3. That the proceeds of the sale of the real property, which is the subject of this action and which is to be sold pursuant to the decree of sale entered this same date, shall be distributed to the judgment creditors according to their priorities as set forth above.

Dated: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Lodged August 30, 1955.

[Endorsed]: Filed September 13, 1955.

Entered September 14, 1955.

[Title of District Court and Cause.]

DECREE OF FORECLOSURE AND ORDER OF SALE

The above-entitled matter coming on regularly to be heard before the Court on the 17th day of August, 1955, without a jury, and the plaintiff appearing by its attorneys Lloyd H. Burke, United States Attorney; Charles Elmer Collett, Assistant United States Attorney, and Alonzo W. Watson, Jr., attorney in the office of the Regional Counsel,

Internal Revenue Service; the defendants Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb appearing by their attorneys Wagener & Brailsford; and the Court having heard the evidence and received and considered the stipulations as to facts entered into by the aforementioned plaintiffs and defendants through their respective attorneys and the defendants, the State of California, the County of Alameda and the City of Oakland through their respective attorney and the Court being fully advised in the premises; now, in accordance with the Order of the Court entered on August 26, 1955,

It Is Hereby Ordered, Adjudged and Decreed that the prayer of the United States of America that its liens described in its complaint be foreclosed is granted.

It Is Further Ordered, Adjudged and Decreed that the property referred to in the complaint and hereinafter particularly described, be sold at public auction for cash according to law, that the plaintiff or any of the parties to this suit may purchase at said sale. That Frank O. Bell, United States Marshal for the Northern District of California, is hereby appointed to act as commissioner to sell said real property; that out of the proceeds of said sale the commissioner retain his fees, disbursements and commissions of said sale, and pay first the following sums to the United States of America, the sum of \$8,068.86, plus interest from March 27, 1945, to August 26, 1955, in the amount of \$5,042.48; the

sum of \$16,773.02, plus interest from May 21 1945, to August 26, 1955, in the amount of \$10,329.19; the sum of \$365,040.50, plus interest from December 9, 1946, to August 26, 1955, in the amount of \$190,841.17, and that the commissioner take and return to this Court receipts for the amounts so paid, to be presented to this Court together with his return and report of sale, and any surplus moneys which may remain after applying the proceeds of said sale, said surplus if any shall be applied as follows; first, to the State of California the sums of \$16,519.31 plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$9,243.06 until paid; second, to the United States, the sum of \$1,139,375.68 plus interest from August 1, 1949, to August 26, 1955, in the amount of \$414,857.61; third, to the State of California, the sum of \$114.73, plus interest from August 1, 1955, at the rate of one-half of one per cent per month on \$1.05 until paid; fourth, to the County of Alameda and the City of Oakland, the sum of \$835.70, plus interest thereon according to law from August 16, 1955.

It Is Further Ordered, Adjudged and Decreed that the defendants Warren C. Graham and Agnes B. Graham, Frank Hansen and Catherine Young Cobb, and all persons having liens subsequent upon the property herein described and their personal representatives, be forever barred and foreclosed of any right or claim to and from all equity of redemption in said property and every part thereof; that the commissioner shall execute a deed to the purchaser or purchasers at such sale.

The property hereinabove referred to is particularly bounded and described as follows:

Beginning at the point of intersection of the southeastern line of Wood Drive with the western line of lot 7 in block "H", as said drive, lot and block are shown on the map of "Montclair Estates", hereinafter referred to; running thence along the said line of Wood Drive the four following courses and distances: Northeasterly along the arc of a curve to the left with a radius of 185.00 feet, a distance of 26.79 feet; north $61^{\circ} 45'$ east 130.94 feet; northeasterly along the arc of a curve to the right with a radius of 170.00 feet, a distance of 93.22 feet and northeasterly along the arc of a compound curve to the right with a radius of 44.00 feet, a distance of 17.65 feet to a point on the southeastern line of said lot 7; thence along the southern, southwestern and western lines of Wood Drive, as said drive is shown on the map of "Montclair Acres", hereinafter referred to, the four following courses and distances: easterly and southeasterly along the arc of a curve to the right with a radius of 44.00 feet, a distance of 61.51 feet; south $16^{\circ} 15'$ west 92.00 feet; southerly along the arc of a curve to the left with a radius of 225.00 feet, a distance of 76.35 feet and south $3^{\circ} 11' 30''$ east 20.14 feet; thence leaving said western line of Wood Drive south $69^{\circ} 19' 27''$ west 163.45 feet to the southeastern corner of said lot 7; thence along the general

southern boundary line of said block "H", the following seven courses and distances: north $6^{\circ} 03' 40''$ west 19.07 feet; north $65^{\circ} 31' 10''$ west 23.60 feet; south $57^{\circ} 44'$ west 74.67 feet; south $37^{\circ} 46' 10''$ west 110.27 feet; north $76^{\circ} 54'$ west 39.13 feet; north $16^{\circ} 15' 20''$ west 108.71 feet and north $28^{\circ} 53' 40''$ west 10.56 feet; thence north $45^{\circ} 21'$ east 202.43 feet to a point on the said western line of lot 7; thence north $0^{\circ} 54' 40''$ east 37.90 feet to the point of beginning.

Being a portion of lots 6 and 6-"A" and all of lot 7 in block "H", as said lots and block are shown on the map of "Montclair Estates, Oakland, Alameda County, California", filed October 9, 1922, in book 3 of Maps, page 43, in the office of the County Recorder of Alameda County.

And being also a portion of lot 6 in block "G", as said lot and block are shown on the map of "Montclair Acres, Oakland, Alameda County, California", filed June 7, 1921, in book 7 of Maps, pages 86 and 87, in the office of the County Recorder of Alameda County.

Date: September 13, 1955.

/s/ O. D. HAMLIN,

United States District Judge.

Lodged August 30, 1955.

[Endorsed]: Filed September 13, 1955.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court, and to
the United States of America and Lloyd H.
Burke, United States Attorney:

You Will Please Take Notice that Warren C. Graham and Agnes B. Graham, his wife, and Catherine Young Cobb, defendants in the above-entitled action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment herein rendered and entered in said United States District Court for the Northern District of California, Southern Division, on the 14th day of September, 1955, in favor of the United States of America, and against said defendants and each of them, and from the whole of said judgment.

Dated: October 13, 1955.

WAGENER, BRAILSFORD &
KNOX;

/s/ AUGUSTIN DONOVAN,
Attorneys for Said
Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 14, 1955.

[Title of District Court and Cause.]

AMENDED NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court, and to
the United States of America and Lloyd H.
Burke, United States Attorney:

You Will Please Take Notice that Warren C. Graham and Agnes B. Graham, his wife, and Catherine Young Cobb, defendants in the above-entitled action, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment herein rendered and entered in said United States District Court for the Northern District of California, Southern Division, on the 14th day of September, 1955, in favor of the United States of America, and against said defendants and each of them, and from the whole of said judgment, and from the Decree of Foreclosure and Order of Sale made in the above-entitled case by said Court, and entered on the 14th day of September, 1955.

Dated: October 26, 1955.

WAGENER, BRAILSFORD &
KNOX;

/s/ AUGUSTIN DONOVAN,
Attorneys for Said
Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 26, 1955.

In the United States District Court for the Northern District of California, Southern Division

No. 30,821

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WARREN C. GRAHAM and AGNES B. GRAHAM, His Wife; FRANK HANSEN, a Single Man; CATHERINE YOUNG COBB and J. PRESTON COBB, Her Husband; COUNTY OF ALAMEDA, State of California, a Municipal Corporation; CITY OF OAKLAND, State of California, a Municipal Corporation,

Defendants.

Before: Hon. Oliver D. Hamlin, Judge.

REPORTER'S TRANSCRIPT

Wednesday, August 17, 1955—10:00 A.M.

Appearances:

ALONZO W. WATSON, JR., ESQ.;

C. ELMER COLLETT, ESQ.,

For the Plaintiff.

WAGENER & BRAILSFORD, by

SAMUEL H. WAGENER, ESQ., and

PHILIP KNOX, JR.,

For the Defendant.

The Clerk: United States v. Warren C. Graham, et al.

Will respective counsel please state their appearances for the record?

Mr. Watson: Alonzo W. Watson, Jr., for the United States. Mr. Collett, United States Attorney, will be with me on this job.

Mr. Wagener: Samuel H. Wagener for the defendants. Mr. Knox, Jr., will be with me later. He was detained in Superior Court this morning.

The Court: All right. Proceed.

Mr. Watson: This is an action to reduce federal tax liens to judgment.

It is also an action to collect part of those federal tax liens by having this Court order a foreclosure sale of certain property located in Alameda County, and also ordering the proceeds of that sale paid in partial satisfaction of the liens of the United States.

The federal tax liens here in question arose against defendants Warren Graham and his wife, Agnes B. Graham, because of assessments made in 1945, 1946, 1947 and 1949.

The Court: May I interrupt for a moment? Mr. Wagener, did you say you were representing the defendants?

Mr. Wagener: The defendants Warren C. Graham and——

The Court: Who is representing the other defendants?

Mr. Wagener: I also represent the defendants Cobb. [3*]

The Court: I see a lot of defendants here named. Do they not appear—County of Alameda, State of California; State Board of Equalization, City of Oakland?

Mr. Wagener: They have appeared by stipulation, I believe.

Mr. Watson: Yes, your Honor, there are stipulations on file by the State of California, and stipulations that will be filed. In fact, we will file the stipulations of the City of Oakland and County of Alameda at this time.

The Court: What do the stipulations say?

Mr. Watson: Those stipulations set out the nature of their tax lien claims against the defendants Warren Graham and Agnes Graham. In the stipulations filed by the county—it is a joint stipulation by the county and city. They there describe the nature of their liens, give the dates those liens arose, or supposedly arose, and set out the amounts of liens.

The Court: Are they still actively litigating for their liens?

Mr. Watson: Yes. It is my understanding that they would like this Court to determine the priorities on the basis of this stipulation.

The Court: Well, I will look at it. Go ahead.

Mr. Watson: Under our allegations the total amount of the federal tax liens is well over a million dollars. [4]

The property here involved consists of houses and lots and household furnishings. At the present time legal title to this property purportedly vests in

Catherine Young Cobb. It is the position of the United States that this property here involved was transferred to Catherine Young Cobb burdened with their federal tax liens, and that those liens are a prior claim on this property.

It is also our position that the series of transfers that brought this property to defendant Catherine Young Cobb were fraudulent and were made with the intent to place this property beyond the power of seizure by the United States, so that the United States could not collect its just tax claims against defendants Warren C. Graham and his wife, Agnes B. Graham.

These defendants, Warren Graham and Agnes Graham, in their pleadings contend that our liens did not attach to the property while they owned it. Defendant Catherine Young Cobb claims that her right, title and interest to this property is not subordinate to the interest of the United States in that property. In other words, she says her rights are superior to ours.

As we have already stated, the State of California and City of Oakland and County of Alameda are in here claiming some right to the property by virtue of liens they have assessed against the defendants Warren and Agnes Graham. They are [5] protecting their position by filing the stipulation setting out the nature of their liens.

The other defendants are now eliminated. Some of them have filed disclaimers. Others haven't appeared. We have taken the deposition of defendant

Frank Hansen and later we will offer that in evidence.

Our evidence will establish the federal tax liens for the years 1945, 1946, 1947 and 1949, and it will also show the dates those liens arose and the present outstanding balance of all those liens.

Now, our evidence will further show with respect to the first of these tax liens in 1945, that they arose in March of 1945; that the second tax liens arose in May of 1945, so that when defendants Warren Graham and his wife, Agnes B. Graham, took title to this property by a deed recorded October 16, 1945, our liens then attached to that property.

We will show also with our evidence that these liens were recorded with the Recorder over in the County of Alameda on August 10 of 1946, and that that August 10th date is about four or five months before a deed transferring the property to Frank Hansen was recorded over in Alameda, and more than two years before, or almost two years before the deed was recorded on May 28th of 1948 transferring the property to defendant Catherine Young Cobb.

Our evidence will also establish that these [6] transfers were made at a time when they would have left the defendant Warren Graham without sufficient money to pay his just debts, and that that was part of the general scheme or plan on his part to defraud his creditors and to place this property where it could not be seized to pay his tax claims.

One further point: We will show that collection

waivers were secured with respect to these 1945 assessments, and that those collection waivers extended the right of the United States, or protected the rights of the United States up to and beyond the period of this suit.

Mr. Wagener: May I state our position, your Honor?

The Court: Yes.

Mr. Wagener: Our position is that the deed referred to by counsel, which went to a trustee for Catherine Young Cobb, the daughter of Mr. Graham, and subsequently to her, was executed on August 6, 1946, the date it bears; that Mr. Graham at that time was solvent; that he deeded the property to his daughter partly in consideration for the cancellation by her of a note which she held of his, and partly in consideration for the love and affection which he bore her as his daughter.

The deed, the agreement for the transfer of the property, was made in May of 1946. The deed was executed and delivered to Frank Hansen as trustee on August 6th, 1946. While it was not recorded until December 7, 1946, it is our position that it takes precedence over the lien for taxes which was recorded [7] on August 10, 1946, because under the California recording statutes, Civil Code 1214 and 1215, a lien claimant is not one of the persons who is protected against a prior unrecorded deed.

Subsequently the property was conveyed by deed from trustee Frank Hansen to Catherine Young Cobb, the daughter of Mr. Graham.

As I see the situation, your Honor, the issues

could narrow themselves down to this fact: That if Warren C. Graham was solvent at the time he made the deed, the United States is not protected against the unrecorded deed, and then the deed was good against this lien and against all the liens of the government.

However, if it becomes an issue in the matter, it becomes important to determine whether there is a priority between that one tax lien, then we do dispute and have in our answer disputed the tax lien of the government filed in 1946 on the basis that it was not what it purports to be, a valid transferee tax; and secondly, on the basis that it was filed beyond the period specified in limitations.

We have pleaded the statute of limitations of the Internal Revenue Code. While it is true there was a waiver executed, it is our position that was executed under duress, and we will be obliged to produce proof on that point should it become [8] necessary.

The Court: Do you contest the reducing of the federal tax liens to judgment for the years 1945, 1947, 1949?

Mr. Wagener: The 1945 one we do contest.

The Court: 1945 and 1946?

Mr. Wagener: The ones set forth in Plaintiff's first and second causes of action, I believe.

The Court: The reason I ask that, you mentioned the year 1946.

Mr. Wagener: It was recorded in 1946. The lien was recorded October 10th, 1946.

There is a tax lien against Warren C. Graham

which is covered in plaintiff's first cause of action starting on page five of the government's original complaint; and the second cause of action, which is for a similar tax against the defendant Agnes B. Graham, which is set forth in the second cause of action commencing on page six of the original complaint.

The Court: That is the same lien, though?

Mr. Wagener: Yes, your Honor. And the fifth cause of action purports to be a restatement of the same tax in amount and date, and we contest that one, also.

The rest of them we do not contest as to reducing them to judgment.

The Court: So that actually the one you are contesting is the one recorded in 1946?

Mr. Wagener: That is correct. [9]

The Court: Which is set forth in the first and second causes of action. And you say there is a restatement of that in the fifth cause of action?

Mr. Watson: That is right. Our fifth cause of action under the original complaint is in fact a duplication of our first and second, and we are dropping that out.

The Court: You are dropping the fifth?

Mr. Watson: Yes.

The Court: That leaves the third and fourth causes of action which are not being contested, is that right?

Mr. Wagener: We don't know the facts with regard to the assessment. If they have the records to establish that the liens were filed and so on, we

cannot contest it. We have denied them on information and belief, and allegations about the receipt of the liens, and so on.

The Court: All right. How long do you gentlemen think this case will take?

Mr. Watson: Well, your Honor, we have a witness here that can identify our various documents that show the establishment of our liens. But if Mr. Wagener is willing, we can stipulate to the receipt of these documents in evidence, you will have a chance to look them over. Or we can call our witness who is familiar with them and we can identify them for the Court.

We have documents for each cause of action that shows [10] the time the lists were made out, the time the Collector received them. As your Honor probably recalls, the lien arises at the time the Collector received the assessment list carrying the assessments.

The Court: Don't assume too much, Mr. Watson, about my knowledge about taxes because I have not tried one of these cases before.

Mr. Watson: Maybe your Honor would appreciate it if I would recapitulate that briefly?

The Court: Yes.

Mr. Watson: Under the law that was applicable at this time, which was the Internal Revenue Code of 1939, it was Section 3670 that gave the United States a lien for taxes, and that lien attaches to all property and rights in property belonging to a person who has an outstanding unpaid tax liability.

Section 3671 of the Internal Revenue Code of

1939 provides that the lien arises when the Collector receives the assessment list carrying these assessments. They are assessments of outstanding taxes.

Section 3672 or 3673 provides that this lien that arises when the Collector receives the assessment list is good against all except mortgagees, pledgees, purchasers or judgment creditors.

The word "purchaser" has been defined by courts to mean [11] a person who pays present consideration, full value. And our lien is good against all those classes of persons. And it may become important here because it looks as if they may maintain that defendant Catherine Young Cobb is a purchaser or in one of those four categories.

But in any case, this same provision of the Code provides that once our notices of tax liens are recorded, those liens are good against even those four classes of persons; and it is good against anyone from that time on.

So what we have in this situation is that our liens for 1945 arose in March and May of 1945 when the Collector received the lists carrying those assessments.

The Court: May, 1945?

Mr. Watson: The first is March—March 26th of 1945. That was the one against defendant Warren C. Graham. The one against his wife, Agnes B. Graham, arose on May 14th when the Collector in New York received the assessment list. Those liens were good at that time, under the Revenue Code,

against all except those four classes of persons that I have enumerated.

On August 10th when our notices of liens were actually recorded covering both the March and May, 1945, assessments, then those liens became good against the world by operation of Section 3672.

The Court: That is August 10th, 1946? [12]

Mr. Watson: Yes. See, those were transferred out to California for collection. The assessments were actually made in New York, and then because the Grahams had property out here and those liens attached to property no matter where located, the Collector in New York transferred them out here to the San Francisco Collector, and the San Francisco Collector scheduled those assessments for collection here, and after he scheduled them, he then filed these notices of lien in Alameda County.

That is what these documents we have here are concerned with: the assessment list, the transfer forms from New York to San Francisco, the notices of tax liens.

We have the collection waivers that were signed. And we can introduce at this time the requests for admissions and the answers to those requests that are on file where the defendants, the two Grahams, admit these collection waivers carry their signature but claim that those signatures were taken under duress and that the date has been changed on them. We are in a position to prove, if they bring forward any proof, that that is not so.

The Court: All right.

Mr. Watson: Then we have as the last document a summary of all these things. That is what we call

our Assessment Payment Certificate. It shows all relevant dates and the present outstanding balance. We have two for each of our [13] causes of action.

Shall we mark these and introduce them in evidence, your Honor?

Mr. Wagener: I am not familiar enough with them. I would prefer that the witness be called to identify them.

The Court: All right.

Mr. Watson: Call Mrs. McGregor.

HILDA E. MCGREGOR

called as a witness on behalf of the plaintiff; sworn.

The Court: State your full name, please.

The Witness: Hilda E. McGregor.

Mr. Watson: Your Honor, could we have these documents marked for identification?

The Court: All right. What is the first one, Mr. Watson? Identify them for the record.

Mr. Watson: Well, the document bears the date—Well, I can ask Mrs. McGregor to identify them. First, let me ask her a few preliminary questions.

Direct Examination

By Mr. Watson:

Q. Mrs. McGregor, where are you presently employed?

A. At the District Director of Internal Revenue.

Q. How long have you been so employed?

A. Since November 1, 1944.

(Testimony of Hilda E. McGregor.)

Q. And what services do you perform over there? [14]

A. My present assignment is, I am assistant supervisor at the adjustment unit.

Q. Will you explain a little about that particular job? What do you do in that position?

A. This is a position in the accounting branch which comes directly under the Collection Division. Our function in the adjustment unit is to review accounts as to the status of collection, the making efforts to collect money. We check for liens; we adjust overpayments; we do what we can about underpayments. Seems to be sort of a troubleshooting unit.

Q. Mrs. McGregor, in connection with your work have you become familiar with the accounts of defendants Warren C. Graham and Agnes B. Graham?

A. Yes.

Q. I will show you the government's proposed Exhibit 1 and ask you if you will identify those documents.

A. This is a New York assessment list dated March the 23rd of 1945. It records Warren C. Graham as transferee of a 1942 liability. It says that he is transferee of the former Kincaid Company, Inc.

Q. And it gives the amount, too, does it not?

A. Oh, yes, it gives the amount that he is assessed and is due. It is an income tax assessment.

Q. And there is a second document. What is that?

(Testimony of Hilda E. McGregor.)

A. This is known as our Form 23-C. That is the assessment [15] certificate that was submitted to Washington and the Bureau stating that we had proposed these assessments and the Commissioner——

The Court: By “we” you mean who?

A. The local office in 1945 did propose an assessment, recorded it and submitted totals thereof on this certification sheet, at which time the Commissioner in Washington, D. C., would sign them, and that made it a valid document.

The Court: So that we may have this for the record, when you say “the local office” and speak of the Commissioner, will you give them whatever title they have so that the record has the proper designation?

The Witness: I am sorry. The local office I meant in this case, of course, was New York. He was known as the Collector of Internal Revenue. He was responsible, with his various functions, for preparing these assessments. They were mailed to Washington, D. C. The Commissioner of Internal Revenue would sign them.

Q. (By Mr. Watson): Then what did he do with them after he signed them?

A. Of course, after being signed, they were returned to us to be——

The Court: By “us” you mean who?

A. In this case I mean again it would be New York. Each Collector of Internal Revenue in a specific district prepares [16] records which he for-

(Testimony of Hilda E. McGregor.)

wards to Washington, and the Commissioner signs them after which they are returned to each specific district. In this case this whole transaction was between the Second District in New York and Washington, D. C.

Q. (By Mr. Watson): Mrs. McGregor, I will show you——

The Court: Let's mark that exhibit you have been talking about Government's 1 for Identification so that we may have that in the record.

Mr. Wagener: Will you wait on the next one until I have had a chance to examine it?

The Court: Just mark it for identification.

(Whereupon, the document referred to was marked United States Exhibit No. 1 for Identification.)

The Court: All right; proceed.

Mr. Watson: I believe counsel wanted me to wait.

The Court: Yes, give him an opportunity to look at that.

Mr. Watson: May this be received in evidence, then?

The Court: That was marked Government's Exhibit 1.

Q. (By Mr. Watson): Mrs. McGregor, I show you Government's Exhibit—proposed Exhibit 2, which are photostats of what purport to be tax transfer vouchers. Will you look at those and ex-

(Testimony of Hilda E. McGregor.)

plain what they are? There are two documents there.

A. These are photostatic copies of a standard government form, No. 514. It is a tax transfer voucher. In this instance the Collector of the Second District of New York [17] transferred the liability of the tax to the San Francisco district.

The Court: Explain that a little bit more to me, please.

A. Yes. This is in a slightly revised form, the same liability we were talking about a minute ago. However, it has been recorded on this standard form from one collection district to another, and it is mailed through the mails setting forth the date of doing this and the date it is received. In this instance it was received in the Collector's office in San Francisco. When he received this, it is recorded here and becomes a permanent part of our records.

The Court: By "recorded", you mean what?

A. Well, I mean listed with a typewriter in a book.

The Court: You don't mean recorded in the County Recorder's office?

A. No.

The Court: But for the purpose of collection, the item is transferred from one district to another, is that right?

A. That is right.

The Court: Because of what? Because it is in the Second District or has property in the Second District or what?

(Testimony of Hilda E. McGregor.)

A. It may be transferred for any reason. Generally, it is because the taxpayer has moved from one district to another.

The Court: All right. [18]

Mr. Watson: I ask that these two tax transfer vouchers be received in evidence as Government's Exhibit 2.

The Court: They may be so marked.

(Whereupon, tax transfer vouchers were marked United States Exhibit No. 2 and received in evidence.)

Q. (By Mr. Watson): Mrs. McGregor, I show you what purports to be Government's Exhibit 3, which is a photostat of a notice of tax lien under the revenue laws, and ask you if you will explain that document to the Court.

A. Well, it is a standard government form, No. 668.

The Court: 668?

A. 668. "Notice of Tax Lien Under Internal Revenue Laws." It bears date of July 26, 1946, and it was recorded August 10, 1946; recorder's series TT-70256, dated March 15, 1954, Thomas W. Fitzsimmons, County Recorder of Alameda County.

The Court: That is really a certification?

A. Yes.

The Court: It is recorded in Alameda County?

A. Yes.

The Court: About August 10, 1946?

Mr. Watson: That is correct, your Honor. I

(Testimony of Hilda E. McGregor.)

would like permission to offer this in evidence as Government's Exhibit 3.

The Court: It may be so marked.

(Whereupon, notice of tax lien was received in evidence and marked United States Exhibit No. 3.) [19]

Q. (By Mr. Watson): Mrs. McGregor, I show you Government's Exhibit 4, which purports to be a tax collection waiver signed on November 21st, 1950, by Warren C. Graham. Would you explain that to the Court, please?

A. It is a standard government form 900, tax collection waiver. It is an agreement between Warren C. Graham of the Graham Ship Repair Company—Shall I read it all?

The Court: What date is it?

A. Oh, this was signed December 31st, 1952. No, just a moment. November 21st, 1950.

The Court: Well, I think that sufficiently describes it. Show it to counsel.

Mr. Watson (Handing document to counsel): Perhaps I should at the same time offer for evidence the request for admissions propounded by the United States to defendant Warren C. Graham in connection with these particular waivers. They are now on file with the Court. I have copies here, and we can mark it as an exhibit and enter it now, if you like, or withdraw it from the file.

The Court: Don't you think that would be confusing? Let's get this document first and then we will see what else you have to offer?

(Testimony of Hilda E. McGregor.)

Mr. Watson: We offer this as Government's Exhibit 4.

The Court: It may be so marked.

(Whereupon, tax collection waiver was received [20] in evidence and marked United States Exhibit No. 4.)

The Court: Now, do you contend you have another document there which refers to this Exhibit 4?

Mr. Watson: Yes, your Honor. The original is actually on file with the Court. I have here our request for admissions proposed to the defendant Warren C. Graham; a photostatic copy of tax collection waiver, and answers of defendant Warren C. Graham to plaintiff's request for admissions.

The Court: May I see that? Let's see if we can clarify it. Have you seen this, Mr. Wagener?

Mr. Wagener: Yes, I have, your Honor.

The Court: Well, I suggest that that be marked Exhibit 4-A so that we tie it in with your tax collection waiver.

Mr. Watson: All right.

(Whereupon request for admission, photostatic copy of tax collection waiver and answers to requests for admissions were received in evidence and marked United States Exhibit No. 4-A.)

Q. (By Mr. Watson): Mrs. McGregor, I show you Plaintiff's Exhibit 5 and ask you to explain that document to the Court.

A. This is a standard form 899, certificate of

(Testimony of Hilda E. McGregor.)

assessments and payments. This reflects the liability of Warren C. Graham, income tax liability for 1942, gives the liability and outstanding balance, which was now \$8,068.68. It reflects [21] all the actions that have taken place on the various assessment sheets. It is a resume, actually, of all transactions that have happened to the liability.

The Court: From what date to what date?

A. The assessment list was signed March 23rd, 1945. It was received back in New York from Washington, March 26th, 1945.

The Court: That doesn't answer my question. Well, all right. Go ahead.

Mr. Wagener: I would object to the introduction of this in evidence, your Honor, as being merely a self-serving review by the Department of Internal Revenue of all the various acts. Each one of them appears to be established therein to a certain extent and can be established independently. I would object to it as being incompetent, irrelevant and immaterial, not having any probative value, and being a self-serving statement.

The Court: Is it in the nature of a chart prepared by the Bureau, counsel?

Mr. Watson: No, your Honor, this document picks up all the entries that the District Director or the then Collector's office, makes in respect to a particular account.

It shows not only when the list was signed but when it was returned to the Collector and received by him. It shows when there was a demand made

(Testimony of Hilda E. McGregor.)

for the taxes. It shows when the claim was recorded and shows any payments, and also the [22] outstanding balance.

It is the document that is really a statement of account for the particular taxpayer. It gives the whole picture of the taxpayer's account. In fact, I believe this document alone is enough to show the nature of the account.

The Court: When was that prepared?

Mr. Watson: This was prepared July 22nd, 1955, at our request. It is signed by Glen Jamison, certified a true and correct record of the account of Warren C. Graham. If counsel insists on its being out, we are going to have more documents that show outstanding liabilities that are considerably in excess of the amounts actually now outstanding.

Mr. Wagener: If your Honor please, because of the nature of our defense to this transferee tax, I can't permit an item like this to go in without objection because it assumes a lot of things that we are not familiar with and which have not been testified to by this witness. It is merely a self-serving summary by the Department of Internal Revenue.

The Court: Well, I will mark it Exhibit 5 for Identification and we can pass on the admissibility later. It may be something that is just prepared for the convenience of counsel for trial purposes, which might be in the nature of a chart prepared by an accountant. Is that it?

Mr. Watson: No, your Honor. It is our view that this is a vital document because it picks up

(Testimony of Hilda E. McGregor.)

all the data from [23] these underlying documents, and, in addition, shows the payments that have been made on the account.

Without this you don't have any record of the payments that have been credited to the taxpayer's account, so your records are not complete without this document. Yet it is in summary form, and, as I say, reflects what is on these previous documents so far as dates received and when liens were recorded.

But it does have that additional, vital information of the present outstanding balance.

The assessments against Warren C. Graham were originally in the amounts of thirty-six hundred some odd dollars, and also the amount of twelve thousand eight hundred and some odd dollars, and in a previous suit we collected some of that and applied it first in payment of the thirty-six hundred some odd dollars and then again to the twelve hundred some odd thousands of dollars. So without the document his accounts would show that he still owes a total of some sixteen thousand, which is not the case. He now owes, under this particular cause of action, only a little over \$8,000.

The Court: With that statement, do you still object to it?

Mr. Wagener: I do, your Honor. This is alleged also, your Honor, to be a transferee's taxes. There is nothing shown there. It is stated this is an income tax. We are [24] contesting this as a valid transferee's tax. We don't consider it as such.

(Testimony of Hilda E. McGregor.)

Mr. Watson: If your Honor please, it is long past the time that you can contest these taxes. We sent notice on that back in 1942. The assessment isn't made until after the time to contest the actual tax liability is past.

Mr. Wagener: That might be as to the defendant Warren C. Graham, your Honor. It isn't as to the defendant Catherine Young Cobb, who is the present record owner of the property.

Mr. Watson: They can't be questioned by anybody now. They are against Mr. Graham, and when he doesn't come in and bring up any defense or object to them, they are established and are on the list of the District Director or the Collector's office as such. Nobody else can challenge them. They are his liability and he didn't challenge them.

The Court: Are all of these documents that are referred to in Exhibit 5 for Identification of record in the office of the Director of Internal Revenue?

The Witness: I don't think I understand.

The Court: There were a number of documents referred to in Exhibit 5 for Identification.

The Witness: Yes.

The Court: Are all of those documents there referred to of record in the office of the Director of Internal Revenue?

The Witness: The first thing it says, "23-C [25] assessment list signed March 23rd, 1945." That is the certification sheet that would be retained in the New York Second District office. However, a mo-

(Testimony of Hilda E. McGregor.)

ment ago I identified the photostatic copy thereof.

The Court: Did you hear my question? Read the question, Mr. Reporter, will you, please?

(Question read.)

The Witness: If I understand that, your Honor, all these items on here represent documents. The original document is in New York.

The Court: I still repeat my same question, madam: Are all of those documents therein referred to of record in the office of the Director of Internal Revenue?

A. Yes, sir. I am sorry. They are on record.

The Court: Now, the ones referred to as assessment list 23-C is here in evidence, is it not?

Mr. Watson: Yes, your Honor.

The Court: Is that right?

Mr. Watson: Yes.

The Court: What about Form 17, First Notice and Demand? Where is that?

Mr. Watson: The first notice and demand was made in New York, and that is annotated on their records.

Q. Isn't that right, Mrs. McGregor?

A. Right. [26]

The Court: Is it noted in any record we now have in evidence?

A. It is imprinted, stamped on the photostatic copy of the assessment list.

(Testimony of Hilda E. McGregor.)

The Court: Of assessment list 23-C?

A. 23-A.

Mr. Watson: That is the list itself. C is the certificate.

The Court: What about Form 69? I am trying to find out where these documents are. Do we have them in evidence? Are they in the San Francisco office? Is there some record of them here?

Mr. Watson: What happens, your Honor, is that these certificates—Well, we have described that.

After the list is received by the Collector, then he makes this notice, or files the first notice and demand, and lists on that the different items in their record.

Over here we have all these things listed as of record, as having been done, and the District Director has certified to the fact that those steps have been taken. It is his certification that his business records show that each of those steps has been taken that that is the history of this account.

The Court: Did you notice the certification at the bottom, Mr. Wagener?

Mr. Wagener: Yes, your Honor, I did. [27]

The Court: In other words, that is a certification that those documents are of record in his office.

Mr. Wagener: Yes, sir.

The Court: For what value it may have, I think it may be admitted into evidence.

Mr. Wagener: Very well.

(Testimony of Hilda E. McGregor.)

The Court: Objection overruled.

(Document entitled "Certificate of Assessments and Payments," admitted into evidence and marked United States Exhibit No. 5.)

Mr. Watson: I would like to renew my request with respect to these documents, that counsel check them over and if they are all right that the Court admit them as our exhibits. They are similar to the others and we would just take up the Court's time.

The Court: Suppose we take a short recess and you show them to counsel during the recess and see what he desires to do.

(Recess.) [28]

Your Honor, during the recess Mr. Wagener and myself have come to an agreement. He has no objection to our exhibits in connection with our second cause of action, with the exception of the tax collection waiver which he would like to have me ask Mrs. McGregor about, and he wishes to preserve his same objection to the certificate of assessment and payment.

The Court: All right.

Mr. Watson: So I would like to offer at this time as Government's Exhibit 6 photostatic copies of the May assessment certificate and May assessment list, and May, 1945, amended assessment certificate.

The Court: Amended certificate?

(Testimony of Hilda E. McGregor.)

Mr. Watson: Yes. There is an original certificate and then an amended certificate.

The Court: Now, all these documents which you are now offering refer to the second cause of action?

Mr. Watson: Yes.

The Court: Why don't we give them a number like—well, mark that 6-A, the next will be 6-B. It refers to the same cause of action.

Mr. Watson: 6-B consists of two tax transfer vouchers.

The Court: Two tax transfer vouchers?

Mr. Watson: Showing the transfer from New York to San Francisco. [29]

The Court: All right, that is 6-B. The first is 6-A.

(Certified copy of assessment certificate was thereupon admitted into evidence as Plaintiff's Exhibit 6-A. Tax transfer vouchers admitted into evidence as Plaintiff's Exhibit 6-B.)

Mr. Watson: 6-C is the notice of tax lien under the Internal Revenue laws that shows a recording date of August 10, 1946.

(Notice of tax lien dated August 10, 1946, was thereupon admitted into evidence as Plaintiff's Exhibit 6-C.)

Mr. Watson: With respect to 6-D—

Q. Mrs. McGregor, I will show you Government's proposed Exhibit 6-D, which consists of two documents, and ask you if you will identify those documents.

(Testimony of Hilda E. McGregor.)

A. Standard form 900, tax collection waiver, dated November 21, 1950. The name is Agnes Bourke Graham.

The Court: Are they both tax collection waivers?

A. Yes.

The Court: Make the earliest one in point of time 6-D.

Mr. Watson: Well, they are both dated November 21st, 1950.

The Court: Both the same date?

Mr. Watson: Yes.

The Court: They may be introduced as one exhibit and [30] marked Exhibit 6-D.

(Two tax collection waivers were thereupon admitted into evidence as Plaintiff's Exhibit 6-D.)

The Court: It is understood that Mr. Wagener is not waiving any defense that he may have as to those tax collection waivers.

Mr. Wagener: That is right, your Honor.

Mr. Watson: Now, the next document is—I don't know how to mark this. This is similar to our other requests for admissions and answers in connection with the tax collection waiver, only these are propounded to Mrs. Graham and answered by her.

The Court: Mark it 6-E, request for admissions directed to Agnes Graham.

Mr. Watson: Well, it actually was made by the United States to Mrs. Graham and answered by her.

(Testimony of Hilda E. McGregor.)

This was after the suit was filed and was done on the part of the United States.

The Court: The answer was by Agnes Graham?

Mr. Watson: Yes.

(Request for admissions directed to defendant Agnes B. Graham was thereupon admitted into evidence as Plaintiff's Exhibit 6-E.)

Mr. Watson: 6-F consists of two certificates of assessments and payments with respect to Mrs. Graham's tax liabilities [31] arising out of the 1945 assessment, and it shows all the relevant data and the outstanding balance on those assessments.

Mr. Wagener: To which I make the same objection as to the one with respect to Mr. Graham, your Honor.

The Court: Yes. Overruled. It may be marked Exhibit 6-F.

(Certificate of assessments and payments directed to Agnes B. Graham was thereupon admitted into evidence as Plaintiff's Exhibit 6-F.)

Mr. Watson: With respect to the Government's third cause of action, this involves taxes that were assessed against Warren C. Graham and Agnes B. Graham for income taxes, penalties and interest, and the list upon which they are carried is the list designated "July, week of 21st, year 1949." This exhibit consists of assessment certificate and assessment list.

The Court: It may be marked Exhibit 7-A.

(Testimony of Hilda E. McGregor.)

(Certified copies of assessment certificate referred to above was thereupon admitted into evidence as Plaintiff's Exhibit 7-A.)

The Court: That is for 1949?

Mr. Watson: Yes, your Honor. May I say here this is chronologically out of order. That corresponds with our third cause of action. Actually, our fourth cause of action is ahead of this one as far as the time is concerned. [32]

The Court: This is with respect to the third cause of action?

Mr. Watson: Yes. Now, this is Exhibit 7-B, a notice of tax lien under Internal Revenue laws, and the lien was filed of record on December 12, 1949, and it is in connection with this third cause of action.

The Court: 7-B.

(Notice of tax lien, 12/12/49 was thereupon admitted into evidence as Plaintiff's Exhibit 7-B.)

Mr. Watson: Then 7-C is a certificate of assessments and payments with respect to the 1949 assessments, and it shows all the relevant data and the present outstanding balance.

Mr. Wagener: To which we have the same objection, your Honor.

The Court: Overruled. Exhibit 7-C, in evidence.

(Certificate of assessments and payments with respect to 1949 assessments was admitted into evidence as Plaintiff's Exhibit 7-C.)

(Testimony of Hilda E. McGregor.)

Mr. Watson: Now, with respect to the Government's fourth cause of action——

The Court: Are those all the documents for the third cause of action?

Mr. Watson: Yes.

The Court: There are no tax collection waivers in that?

Mr. Watson: No, there are no tax collection waivers on [33] that.

The Court: All right, in reference to the fourth cause of action.

Mr. Watson: Government's Exhibit 8-A consists of Commissioner's Telegraphic Assessment List, dated December 6, 1946. There are five pages in all in connection with this exhibit. They are designated as Special No. 2, and they show tax liabilities assessed against defendants Warren C. Graham and Agnes B. Graham for withholding taxes for the first, second, third and fourth quarters of 1946 and the first quarter of 1947. I believe that is correct.

The Court: That is Exhibit 8-A.

(Commissioner's List, 12/6/49 was thereupon admitted into evidence as Plaintiff's Exhibit 8-A.)

Mr. Watson: 8-B is a notice of tax lien under Internal Revenue laws, and this notice refers to assessments shown in Exhibit 8-A. The notice is dated December 9th, 1946, and it was recorded on December 9th, 1946.

(Testimony of Hilda E. McGregor.)

The Court: 8-B.

(Notice of tax lien, 12/9/46, was thereupon admitted into evidence as Plaintiff's Exhibit 8-B.)

Mr. Watson: 8-C consists of or is a Certificate of Assessments and Payments and consists of four separate pages. These pages show the relevant data with respect to the assessments for 1946 and 1947, and show the payments made in [34] connection with those assessments and the present outstanding balances.

The Court: 8-C.

Mr. Wagener: That one is subject to the same objection, your Honor please.

The Court: All right.

(Certificate of Assessments and Payments for 1946 and 1947 was thereupon admitted into evidence as Plaintiff's Exhibit 8-C.)

Mr. Watson: I believe counsel has some questions he wishes to ask Mrs. McGregor.

Mr. Wagener: Are you through?

Mr. Watson: Yes. Or maybe at this time I ought to make a motion that the pleadings be made to conform to the proof. We have originally somewhat different dates in our complaint and somewhat different total amounts outstanding.

The Court: Well, I will take the motion under submission.

(Testimony of Hilda E. McGregor.)

Cross-Examination

By Mr. Wagener:

Q. Mrs. McGregor, you have introduced or have identified as Exhibit 4 a tax collection waiver signed by Warren C. Graham and purporting to bear date November 21, 1950, is that correct?

A. Yes, sir.

Q. Were you in the office of the Collector of Internal Revenue in San Francisco when that waiver was obtained? [35]

A. I was working in the district—the Collector's office at that time.

Q. Were you familiar with the Graham matter at that time?

A. I certainly had seen the assessments on the books.

Q. Do you have any independent knowledge of your own as to when that tax waiver was received in the Office of the Collector of Internal Revenue in San Francisco?

A. No, sir.

Q. Do you have any knowledge yourself of where it was signed by the defendant Warren C. Graham?

A. No, sir.

Q. You are merely identifying it as a document?

A. Yes, sir.

Q. You have no knowledge as to its execution at all?

A. No, sir.

Q. Would the same be true as to Government's Exhibit 6-D, which consists of two tax waivers pur-

(Testimony of Hilda E. McGregor.)

portedly signed by Agnes Bourke Graham and dated November 21st, 1950?

A. Yes, it would be the same.

Q. Your testimony would be the same as to it?

A. Yes.

Mr. Wagener: That is all. I have no further questions.

Mr. Watson: That is all we have with Mrs. McGregor. I wonder if she could be excused at this time?

Mr. Wagener: No objection. [36]

* * *

WARREN C. GRAHAM

one of the defendants herein, called as a witness in his own behalf; sworn.

The Court: State your name, please.

A. Warren C. Graham.

Direct Examination

By Mr. Wagener:

Q. Mr. Graham, you are one of the defendants in this action? A. Yes, sir.

Q. And you formerly owned the property at 6035 Wood Drive in the City of Oakland, is that correct?

A. Yes, sir.

Q. Catherine Young Cobb, who is one of the defendants, is your daughter, is that correct? [60]

A. Yes, sir.

Q. And at some time in 1946 did you have a

(Testimony of Warren C. Graham.)

conversation with her regarding transferring of this property to her? A. Yes, sir.

Q. When did that take place?

A. These conversations were around April of 1946.

Q. Did you at some time have a definite understanding with her that the property would be conveyed to her? A. Yes, sir.

Q. And when did that take place?

A. I had discussed the matter many times between the first of January 1946 until, well, around the month of April of 1946; and my wife and I decided that as we had no children, that we were traveling, and as she didn't like the house as she wasn't there when I bought it——

Q. (Interposing): Who are you referring to?

A. Mrs. Graham.

Q. Your wife?

A. That is right. That I had children by my first wife, my son and daughter.

The Court: I didn't hear that.

A. I had two children by my first wife, the daughter and a son. So we decided that we would give the property to my daughter. We discussed it with my daughter in the first part of April of 1946. [61]

Q. (By Mr. Wagener): Was there any discussion with your daughter on the terms by which this property would be conveyed to her?

A. At that time? No, sir.

Q. Was there ever any discussion as to the

(Testimony of Warren C. Graham.)

terms, either—well, withdraw that. Were there ever any discussions as to the terms of the transfer?

A. Yes. I talked to her on her birthday on May 16th, 1946, and told her at that time.

Q. Where was she then and where were you?

A. I was in Oakland, California, and she was in Georgia.

In words to this effect, I told her, wished her a Happy Birthday and told her, "O.K., the property is yours." Then she in turn said, "Well, I won't take it. But the only conditions by which I will take it, if you will cancel the note,"—which I had given her for some \$3300 some three or four years previously.

Mr. Watson: Your Honor, we move to strike this testimony as hearsay and self-serving. It has no bearing on the position of the United States so far as this section is concerned.

The Court: Well, counsel, you can't sit there and make no objection and then come in and make a motion to strike. If you have any objections to any of the questions, make them and I will try to rule on them. [62]

Mr. Wagener: I might point out that this whole matter had been gone into by the government on its interrogatories, which were submitted to Mr. Graham and which are in the file, or which I presume are in the file.

The Court: Proceed.

Q. (By Mr. Wagener): Was your daughter in fact indebted to you—Excuse me. Withdraw that.

(Testimony of Warren C. Graham.)

Were you in fact indebted to your daughter in May 1946? A. I was.

Q. And about what did that indebtedness amount to?

A. I had borrowed from her in New York about \$3300.

Q. About when was that, Mr. Graham?

A. In October of 1942.

Q. Was there any document evidencing that indebtedness?

A. Yes. She had asked me to give her a note for that indebtedness, which I did.

Q. Did it bear any interest?

A. It bore interest of five per cent. It was a one year note dated around October 16, 1942, for one year.

Q. Did you subsequently deed this property to your daughter or for her benefit? A. I did.

Q. And when was that done?

A. Well, subsequently we deeded to her, to Frank Hansen in trust for her, on August 6th, 1946. [63]

Q. I will show you a deed from Warren C. Graham and Agnes B. Graham, his wife, to Frank Hansen, a single man, describing the property described in the complaint in this action, bearing date 6 August 1946. I will ask you if that is the deed by which you conveyed this property to Frank Hansen in trust for your daughter. A. It is.

Mr. Wagener: I would like to offer this in evi-

(Testimony of Warren C. Graham.)

dence, your Honor. A copy of it has been attached, I believe, to that deposition which your Honor read this morning.

The Court: It may be marked Defendant's Exhibit C.

(Whereupon, deed referred to was received in evidence and marked Defendant's Exhibit C.)

Q. (By Mr. Wagener): Why, Mr. Graham, did you deed it to Frank Hansen in trust rather than directly to your daughter?

A. Frank Hansen was—my daughter was in Georgia at the time. Frank Hansen was my secretary for many, many years, and I told him I wanted to deed this property to him in trust to hold until my daughter came out here to live there.

Q. I will show you, Mr. Graham, a letter dated Oakland, California, August 1, 1946, to Mr. Frank Hansen. I will show you that first and ask you to identify it, if you will, please.

A. This is a letter addressed to Frank Hansen, dated August 1st, and accepted by him on August 1st, in which we turned [64] the home over to Frank Hansen to hold in trust until my daughter is ready to use it. It is signed by myself, Warren C. Graham, my wife, Agnes B. Graham, and Frank Hansen.

Q. Is that the original signature of yours, Warren C. Graham? A. That is correct.

Q. And is that the original signature of your

(Testimony of Warren C. Graham.)

wife, Agnes B. Graham? A. That is correct.

Q. Is that the original signature of Frank Hansen?
A. That is correct.

Q. And what date did Frank Hansen actually sign this?
A. August 1st.

Q. The date it bears? A. The date it bears.

The Court: August what?

A. August 1st.

Q. (By Mr. Wagener): 1946? A. Yes.

Mr. Wagener: I will ask that this be admitted into evidence as Defendant's Exhibit next in order.

The Court: Mark it Exhibit D.

(Whereupon, letter 8/1/46 referred to was received in evidence and marked Defendant's Exhibit D.)

Q. (By Mr. Wagener): Mr. Graham, what was your financial condition on August the 6th [65] 1946?

A. I had a net worth of in excess of [66] \$300,000.

* * *

Q. (By Mr. Wagener): I will show you Plaintiff's Exhibit 4 in evidence, which is a tax collection waiver purporting to bear date November 21, 1950, and extending the time to December 31st, 1952, within which to bring an action on the unpaid assessment for the year 1942. Where did you sign that, Mr. Graham?

A. At McNeill Penitentiary or the Federal Penitentiary at McNeill Island.

(Testimony of Warren C. Graham.)

Q. Do you know when you signed it?

A. My recollection is that I signed it about the 6th of February 1951.

Q. Several months later than the date it bears, is that correct? A. That is correct.

Q. Was it brought to you at McNeill Island?

A. Yes, it was brought to me by Mrs. Graham.

The Court: By whom?

A. By Mrs. Graham.

Q. (By Mr. Wagener): What was the reason that you signed it [67] at that time?

A. I signed it because——

Mr. Watson (Interposing): I want to make an objection. Well, go ahead.

The Witness: I had arrived at McNeill Island, sentenced previously, with the marshal and the sentencing papers or charge. I had no probation report and no investigating agency report.

Mrs. Graham asked me if she should sign this waiver and I told her—She told me that if we would sign this waiver, the Internal Revenue would send up the necessary papers we needed to have to get out for my parole—investigating agency report.

I therefore, under those conditions, I told her to sign her waiver and I signed mine.

Mr. Watson: Your Honor, we object to that testimony as hearsay. He is talking about what Mrs. Graham said to him. She is here in the courtroom and she can testify to that.

The Court: Counsel, as I indicated before, if you have any objection to make, make it before the

(Testimony of Warren C. Graham.)

answers come in. The question was, "Why did you sign it?" Now, that was the time to make the objection.

Q. (By Mr. Wagener): Mr. Graham, can you identify this document for me, which purports to be a photostatic copy of a document headed, "United States Penitentiary, McNeill [68] Island, Washington, February 6, 1951."

A. Yes, sir. It was my request to send this waiver to the Internal Revenue, and granted on February 8, 1951, by the case worker's signature.

Q. Does that refresh your recollection as to when you did actually send that waiver to the Department of Internal Revenue? A. Yes, sir.

Mr. Wagener: I am going to offer this in evidence, your Honor, as defendant's exhibit next in order.

The Court: It may be admitted and marked Exhibit F.

(Whereupon, request to send waiver was received in evidence and marked Defendant's Exhibit F.)

Q. (By Mr. Wagener): What was the Kincaid Manufacturing Company or Kincaid of which this purports to be a transferee's tax?

Mr. Watson: Your Honor, we object to that question on the ground that it is outside the issues of this case.

The Court: What is the purpose of it, counsel?

Mr. Wagener: I appreciate the fact that the

(Testimony of Warren C. Graham.)

amount of tax involved in an assessment can not be contested by the taxpayer after the statutory time has gone by. I know of no authority to the effect that the question of the entire validity, of whether it was in fact what it purports to be or not, can't be contested. [69]

In other words, it is our position that Mr. Graham at no time was ever the transferee of the Kincaid Company and that the tax was invalidly assessed in the first place. Not the amount of deficiency that the Kincaid Company may have had, but his liability as a transferee.

If counsel has authority to the effect that the validity of the tax itself, a transferee tax, can not be contested, I would be glad to hear it. I am familiar with the rule regarding the amount of the assessment not being contestable if not contested within the statutory time. It is our position Mr. Graham at no time was ever a transferee of the Kincaid Company.

The Court: Well, have you any authority to show that at this late date the validity of the assessment may be attacked?

Mr. Wagener: I have no authority either way, your Honor: either that it can or can't. I was unable to find any authority to the effect that the question could be as to the amounts involved in the tax. I appreciate that that can not be contested. They have to be paid if the time is allowed to go by and an action brought to recover them.

But this is not the ordinary income tax against

(Testimony of Warren C. Graham.)

Mr. Graham. It was an income tax against the company with which he was no longer connected, and it is assessed against him and Mrs. Graham as transferees of the company. It is our contention that they were not transferees and no valid [70] assessment was ever made against them.

The Court: They received notice of the assessment, did they not?

Mr. Wagener: Mr. Graham advises me he did not until much, much later, much past the time that the statutory period would have expired.

He had moved from New York to California at about that time, and it is his position he never received notice until after he was out here, long after.

The Court: What is the authority that the amount may not be contested? What is that? Do you have that, counsel?

Mr. Watson: No, your Honor, but I can supply it for you.

The way I understand it, the 90 day letter or notice goes out on that transferee's liability, they advise the taxpayer that a deficiency has been determined, and also at the same time that he is the transferee, and it instructs him that he has 90 days in which to file a petition in the Tax Court to contest the determination of the Revenue Service that he is the transferee, and that the transferee tax is in the amount as shown.

Now, if he does not file a petition——

The Court: That is what I want the authorities on. Is there a section in the Internal Revenue Code on it?

(Testimony of Warren C. Graham.)

Mr. Watson: There is a section, I am sure, which covers [71] it, but I don't have that on hand now. We didn't figure there would be any question made at this late date that the assessments were not valid.

The Court: I would like to have it right now. No use hearing the testimony if it isn't proper. Certainly I don't want to not hear it if it is proper. This is the time to have the authorities—right now. Do you want to refer to the Revenue Code?

Mr. Watson: Yes, your Honor. But aside from that, this matter hasn't been put in issue by the pleadings.

The Court: What?

Mr. Watson: The question of the transferee is not in issue, whether it is valid or non-valid.

Mr. Wagener: We have denied the whole cause of action on information and belief because we had no notice up to that time of the fact that there had been any transferee tax claimed.

I would be willing, if your Honor please, to postpone this part of the examination——

The Court: All right.

Mr. Wagener: ——until we have had a chance to submit authorities on it.

The Court: All right. Go on to something else.

Mr. Wagener: Then until we have gone into that, that is all of the witness at this particular time, your Honor. [72]

HAROLD W. GARDENER

called as a witness on behalf of defendant; sworn.

The Court: What is your full name, please?

A. Harold W. Gardener.

Direct Examination

By Mr. Wagener:

Q. And your present address?

A. 2 Walnut Drive, Pleasanton, California.

Q. I call your attention to the months of July and August 1950, and the period about that time. What was your occupation?

A. United States Probation Officer for the Northern District of California.

Q. In connection with your duties at that time, I will ask you if you were assigned to make a report in the case of United [73] States of America vs. Warren C. Graham and Frank Hansen on one Frank Hansen.

A. I was called upon to make a report on Frank Hansen.

Q. Did you make an investigation and subsequent report of Mr. Hansen? A. I did.

Q. In connection with that investigation, did you look into his character and make a determination as to his reputation for truth, integrity and honesty?

A. Yes, I did.

Q. What was your representation in that connection?

A. In reviewing the file a few moments ago, I find that I recommended against probation because

(Testimony of Harold W. Gardener.)

of his failure to recognize the seriousness of the offense, as well as his untruthfulness during the investigation.

Mr. Wagener: I have no further questions.

Mr. Watson: I have no questions, your Honor.

The Court: Was this an income tax violation?

A. Yes, it was, your Honor.

The Court: Does your office make recommendations in income tax violation cases?

A. In that case we did.

The Court: Have you ever done it in any other case? A. I can't recall.

The Court: I know of none since I have been here. [74] That is all.

Mr. Wagener: Thank you, Mr. Gardener.

(Witness excused.)

Mr. Watson: Your Honor, we have the authorities to support our position as previously given.

The Court: All right.

Mr. Watson: It is Section 311 of the Code of 1939, and that in turn refers to Section 272 of the Internal Revenue Code, the comparable provisions under the new code, are Sections 6901 and 6212.

The Court: What does the provision say, counsel?

Mr. Watson: "Transferred Assets: Method of Collection.

"The amounts of the following liabilities shall, except as hereinafter in this section

provided, be assessed, paid and collected in the same manner and subject to the same provisions and limitations as in the case of the taxes with respect to which the liabilities were incurred. A deficiency of tax imposed by this chapter''—

That is referring to income tax, your Honor.

The Court: Let's get to the point you are talking about. Did you have it there? Let's get to the point you are talking about. I don't want to read the whole section. Just the point involved.

Mr. Watson: As your Honor remembers, I said previously [75] what happened in the case of transferred liabilities is that a deficiency notice is sent out, they have the 90 notice of income tax. Notice was sent to Mr. and Mrs. Graham advising them of the transferee, determination of deficiency, and the fact that they were the transferees.

Now, this section and Section 272, if read in context and together, show that if they do not within the period of 90 days file a petition before the Tax Court to determine the question or take exception to the deficiency determination and the determination that they are transferees, then their rights are lost.

Mr. Wagener: Do you have the record of any such letter being sent in this case?

Mr. Watson: That record is in evidence now. It went in with our exhibits this morning.

Mr. Wagener: Could you show it to me?

The Court: Which one, counsel?

Mr. Watson: It is on the 899's in the first two causes of action.

Mr. Wagener: Those are the summaries that went in over our objection, your Honor.

Mr. Watson: Well, your Honor, the Code provides that taxes of this sort can not be assessed until after the 90 day letter has been issued, so for these to be valid assessments it is necessary that the letter have issued and no [76] petition having been filed.

Mr. Wagener: Can you show me, counsel, where it says here a letter, a 90 day letter was sent and what date it was sent?

Mr. Watson: I can't show you there. I am wrong on that. This doesn't show it, either.

The Court: Well, where is it shown, counsel?

Mr. Watson: Your Honor, it isn't shown.

The Court: I think it should be, don't you?

Mr. Watson: In ordinary experience it should, and for this reason: An assessment can not be made under the revenue code until the time the taxpayer has to contest the liability has run. You can not have a valid assessment until that has elapsed.

The Court: I am not going to assume a lot of things. You are coming into court endeavoring to prove something, so I would assume you would have the evidence to prove it. If there is some question about this thing, I think you should get the evidence if it is available.

Mr. Watson: These taxes or liability on these taxes arose in 1942 back in New York. That is the reason for not opening up these assessments after such a long period. The evidence may or may not be available.

The Court: Where is this law you said you were going to get at the recess and give to me? Give me the section. If [77] you can't read it to me, give it to me and I will read it. Where is it?

Mr. Watson: It is Section 311 of the Internal Revenue Code.

The Court: Section 311? What subdivision?

Mr. Watson: Well, the primary subdivision is "D."

The Court: D?

Mr. Watson: Yes, your Honor. If you will read subsection B, too, I think that will explain it.

The Court: Well, where is there anything in subdivision D which says what you say it says, counsel?

Mr. Watson: Well, that section merely deals with the time in which an assessment can be made. I am in error there.

The Court: That may deal with that, but we are talking about time within which an assessment can be contested. That is what we are talking about now, isn't it? I want to find the section that covers that.

Mr. Watson: Well, as I say, 311.

The Court: Here is 311. I have it in front of me. Point out the subdivision you are relying on and I will try to read it.

Mr. Watson: It says, "The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing to the transferee or fiduciary of the notice provided for in Section 272(a), [78] be suspended

for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary.”

That says, in effect, the Commissioner in Section 272(a) is prohibited from making an assessment during the period that the taxpayer has a right to file a petition with the Tax Court.

The Court: That isn't what we are talking about. We are talking about trying to contest the assessment. It isn't when the statute of limitations runs against the government. We are trying to find out when the end of the time is for them to contest it. Is there some section that covers that?

Mr. Watson: Well, your Honor, I apparently don't have the section you want, but I can give you some cases that will deal with the problem.

The Court: All right.

Mr. Watson: This is a decision of November 5, 1954, and now reported in 1954, Prentice Hall, paragraph 72,317.

The Court: I do not have that available, Prentice Hall. I don't have it. Is there any reported decision?

Mr. Watson: Yes. *United States v. Hauser*, Southern District of California, 25 Fed. Sup. 689. And *Fiori v. Rothensies*, 99 Fed. 2d. 922.

With your Honor's permission, I would like to submit further authorities at a later time. [79]

WARREN C. GRAHAM

resumed the stand in his own behalf; previously sworn.

Cross-Examination

By Mr. Watson:

Q. Mr. Graham, I believe you testified that you transferred the property here in question to Frank Hansen in 1946, is that correct?

A. That is correct.

Q. At that time where were you living?

A. In Oakland.

Q. And were you living on this property that is involved in the lawsuit?

A. I was living at that time at 6035 Wood Drive, yes.

Q. In 1947 when you were in Northern California, where were you living? A. 1947?

Q. Yes. You were living at the same place?

A. That is right.

Q. Where in 1948 when you were in Northern California? A. Same. [80]

Q. And in 1949 where did you live when you were in Northern California?

A. I believe that almost all of 1949 I lived there.

Q. In 1950 where did you live when you were in Northern California?

A. Perhaps the first part of 1950 I lived there—until the beginning of 1950.

Q. And when, then, did you move out of the house?

A. I believe it was when this first federal case occurred.

(Testimony of Warren C. Graham.)

Q. Then you were living there until the time of your criminal tax prosecution? A. Yes.

Q. Have you lived there at any time since?

A. No.

Q. Now, Mr. Graham, with respect to Defendant's Exhibit C, I think you identified this document, is that correct?

A. That is correct.

Q. I will show you the back of this document and ask you if it is a deed and when the deed was recorded.

A. It says on here December 7. I have no personal knowledge of it.

Q. You have no personal knowledge?

A. That is right.

Q. Did you have the deed recorded?

A. No. [81]

Q. Can you tell me who did have the deed recorded?

A. It says on there Mr. Bernard B. Stimmel, attorney.

Q. Was Mr. Stimmel an agent of yours at that time? A. A what?

Q. Was he acting on your behalf?

A. He was our attorney.

Q. He was your attorney?

A. That is right.

The Court: Did you tell him to record it?

A. Specifically I wouldn't recall after nine years, your Honor, but I assume he handled the transaction and did the thing in a proper manner.

(Testimony of Warren C. Graham.)

Q. (By Mr. Watson): In any case it wasn't Frank Hansen? Frank Hansen didn't have anything to do with the recording, did he?

A. That I don't know, but I assume from the record, the document there say Mr. Stimmel and therefore I assume he is the one did the recording.

The Court: Do you have any independent knowledge about it?

A. No, sir.

The Court: Have you any recollection of telling anyone to record it?

A. No, sir. I relied entirely on Mr. Stimmel's position as attorney to do what was necessary. [82]

The Court: Did Mr. Stimmel prepare the deed?

A. I think he did, sir. I think he did, sir.

Q. (By Mr. Watson): Did he prepare it at your request? A. That is right.

Q. Did you talk to Frank Hansen about this transfer prior to the time the deed was recorded?

A. I did.

Q. When did you talk to him about that?

A. I talked to him at various times between May of 1946, and August 1st, 1946.

Q. And did you ever personally deliver a deed to him? A. No.

Q. Do you know that any deed was ever delivered to Frank Hansen? Do you know of your own personal knowledge?

A. Any other deed?

Q. Any deed to the property was ever delivered to him? A. Not to this property, no.

(Testimony of Warren C. Graham.)

Q. He never received a deed to the property?

A. That— I have no knowledge of that. It was delivered in connection with other transactions. He had perhaps delivered data and contracts and information to him. But this property, no.

Q. Is it true that you have at various times deeded other property to Mr. Hansen?

A. One other property I deeded to him, that's right. [83]

Q. And was that property the subject of a lawsuit? A. That's right.

Q. And at that time did the court determine that the transfer was invalid?

Mr. Wagener: I will object to that as not proper cross-examination; incompetent, irrelevant and immaterial.

The Court: Sustained.

Q. (By Mr. Watson): Mr. Graham, did you testify in connection with the criminal proceedings, income tax proceedings, with respect to this particular property? A. I did.

Q. In those same proceedings did you testify with respect to other property that you had and that had been transferred to Mr. Hansen?

A. I can't recall.

Q. Now, in your previous testimony with respect to the property, did you there testify that you borrowed the money from your daughter?

A. That is correct.

Q. And you so testified in this proceeding?

(Testimony of Warren C. Graham.)

A. In this proceeding?

Q. In the previous one, and did you so testify in this proceeding, is that correct?

A. That I don't recall.

Q. You don't recall whether you testified that you borrowed [84] money from your daughter?

A. That I don't recall.

Mr. Wagener: Referring to the previous proceeding or this one?

Mr. Watson: I first referred to the first proceeding, the criminal proceeding.

Q. (By Mr. Watson): Did you testify there you had borrowed money from your daughter?

A. I do no recall.

The Court: What?

A. I do not recall.

Q. (By Mr. Watson): You do not recall?

A. That's right.

Q. Do you recall that in the criminal proceeding you testified that property was a gift to your daughter?

A. Having seen that testimony within the last six months, yes, I said so.

The Court: Having what?

A. Having seen the testimony within the last six months, that I said.

Q. (By Mr. Watson): But you don't recall whether you testified that you borrowed money from her? A. That is right.

Q. You do not recall that?

A. That is right. [85]

(Testimony of Warren C. Graham.)

Q. Did you prepare this note that was supposedly given to your daughter? A. I did.

Q. And did you mail the note to your daughter?

A. Yes.

Q. You don't now have a copy of that note?

A. No, sir.

Q. Did you ever make any payments on the note?

A. No, sir, except in this particular transaction.

Q. What were the circumstances that gave rise to your request for the loan?

A. We were operating the Kincaid Company, Kincaid Manufacturing Company in New York City, with 800 employees manufacturing flame throwers and smoke screens for the United States government—which I invented. We had approximately nine million dollars in business of the Kincaid Company.

With expanding employees, had a difficult time getting the payroll every week, so I had borrowed other money from other sources and loaned some—I don't recall the exact amount—60, 80 thousand dollars, and also borrowed this 3,333.32 from my daughter.

Q. It is your testimony, then, that it was necessary for you at that time to borrow that sum of \$3,000—three thousand and some odd dollars, from your daughter in order to keep up your business operations, is that correct? [86]

A. That is correct. She had previously worked

(Testimony of Warren C. Graham.)

for the company and I remember the figure because it represented four times \$833.33.

Q. At that time was your daughter employed by you? A. Previously she was.

Q. Previously she had been?

A. Employed by the Kincaid Company.

Q. What was the nature of her employment?

A. She worked in the research and development department at a salary of \$10,000 a year.

Q. You were present on July 27th when your daughter gave her deposition, is that correct?

A. Yes, that is right.

Q. Do you recall that she testified that this money came from money she had earned working for a patent attorney who worked for you?

A. The patent attorney was head chief of the patent and research department of Kincaid Company.

Q. So actually she was paid by you rather than —by Kincaid Company rather than the patent attorney?

A. Kincaid Company. She worked in a separate office in the research with the chief of the research and development department; correct.

Q. Was this business, this Kincaid business, fairly profitable? [87]

A. Reasonably so. It was bothered with over-expansion pains of having too much business.

Q. Did you ever get the note back from your daughter? A. No.

Q. Do you know what happened to it?

(Testimony of Warren C. Graham.)

A. She told me she destroyed it. I told her to destroy it and she told me she did.

Q. When you called your daughter on—I think you testified you called your daughter sometime in May of 1946?

A. May 16th, yes, sir.

Q. May 16th? What did you tell us that the occasion was for the call?

A. That is her birthday.

Q. That is her birthday? A. Yes.

Q. It was your testimony you then told her you were transferring the property to her.

A. Yes, I testified in words to this effect: "I figured that, well, the property is yours. You can have it. Agnes said give it to you."

Q. Did you condition the transfer at that time on cancellation of the note?

A. I didn't. She did.

Q. That was her idea?

A. That is right. [88]

Q. You didn't want to hedge the gift with any such consideration, is that correct?

A. That is right.

Q. Now, after you had transferred this property, or after you had told her about making this gift, did you then tell her how you intended to handle the gift?

A. Eight or nine years ago I am positive I couldn't remember every word of a conversation.

Q. But you don't recall you told her you were going to put it in a trust for her at that time?

(Testimony of Warren C. Graham.)

A. I don't recall if I said that to her at that time, but that had been previously discussed with Mrs. Graham and myself.

Q. That had been discussed between Mrs. Graham and yourself? A. That is right.

The Court: Did you tell your daughter about that then over the telephone?

A. I don't recall, sir, if I told her those particular details, that I was going to transfer it in trust for her at the time because she was in Georgia and I was here. But we wrote, Mrs. Graham and myself, that we would hold it in trust for her until she was able to come out here and accept it.

Q. (By Mr. Watson): Did you tell her at any subsequent time that you had transferred it in trust? [89]

A. I certainly did, but exactly when I couldn't recall right now.

Q. Do you recollect—or let me put it this way: When did your daughter actually come to live in the property? A. 1948, I think.

Q. Approximately when in 1948?

A. (No response.)

Q. You don't remember, Mr. Graham?

A. It was after her husband had graduated from school.

Q. Was she out there at any previous time before she finally moved out in 1948?

A. She came out there for a week or two to introduce her husband to us.

Q. Do you recall testifying in the criminal pro-

(Testimony of Warren C. Graham.)

ceedings that she had lived out there for approximately eight or nine months previous to the date that she actually moved out for good?

A. Yes, she had. The house was bought when Mrs. Graham was absent. It was bought by my daughter and myself. My daughter liked the house very much. And then when Mrs. Graham came back she raised the devil with me for buying the house, said he didn't like it, it was too large, and that was the commencement of the idea to transfer the house to my daughter. My daughter was living there.

Q. It is your testimony it was your wife's idea to transfer [90] the property to your daughter, is that correct? A. That is correct.

Q. After you had deeded this property to Frank Hansen, did you file any gift tax returns?

A. No.

Q. You didn't pay any gift tax either, I don't suppose? A. That is right.

Q. To go back a minute, approximately how old was your daughter when she was working at the Kincaid Company and paying \$10,000 a year?

A. Now you are asking me a very embarrassing question. I would have to figure.

Q. Just approximately.

A. Oh, 16, 17 years old, something like that.

Q. When did you request Frank Hansen to deed the property to your daughter?

Mr. Wagener: If your Honor please, I object to that as assuming something not in evidence, that

(Testimony of Warren C. Graham.)

he requested Frank Hansen. I have other proof of that matter.

The Court: It may assume something not in evidence.

The Witness: The question?

Q. (By Mr. Watson): When did you request Frank Hansen——

The Court: That is the objection, that it assumes that he had requested Frank Hansen to execute the deed.

Mr. Watson: I misunderstood, your Honor. Did you rule [91] the question was objectionable?

The Court: I think it assumes something not yet in evidence.

Mr. Watson: All right. Let me phrase it this way:

Q. Did you at any time request Frank Hansen to transfer the property to your daughter?

A. Did I request Frank Hansen? No.

Q. And you never wrote to Frank Hansen and asked him to make a transfer to your daughter?

A. Not that I recall.

Q. You were present in New York when Mr. Hansen's deposition was taken, isn't that correct?

A. I was.

Q. Do you remember Mr. Hansen's testimony with respect to the transfer to your daughter?

A. I do.

Q. Do you recall that testimony?

A. That is right.

Q. Is it true that Frank Hansen said at that

(Testimony of Warren C. Graham.)

time that you sent the deed and asked him to sign it?

A. He was mistaken in that respect.

Q. I am just asking you for a yes or no answer. Is that what he testified to? A. Yes.

The Court: The record is the best evidence. I have [92] read it, counsel.

Q. (By Mr. Watson): Before this transfer to Frank Hansen of this deed to Frank Hansen, did you discuss the fact that this was to be held in trust with him—with Frank Hansen?

A. Certainly.

Q. And did he verbally agree to hold the property in trust?

A. Verbally and in writing.

Q. Were you present when Frank Hansen signed the letter that supposedly set up the trust?

A. I was present when Frank Hansen signed the letter that set up the trust, yes.

Q. And where did he sign that letter?

A. As I recall, it was at the shipyard at 501 First Street in Oakland.

Q. And what was the date?

A. August 1st, 1946.

Q. Was your wife present then?

A. I don't recall if my wife was present then or not.

Q. Then the letter was made out and signed by both of you and you gave it to Hansen and asked him to sign it, is that your testimony?

A. That is right.

(Testimony of Warren C. Graham.)

Q. Do you know whether Frank Hansen ever discussed this trust with your wife?

A. That I don't recall. [93]

Q. Now, previous to the time that this deed to Frank Hansen was recorded on December 7, 1946, had you been contacted by the Revenue Service with respect to your outstanding liabilities?

A. Previous to——

Q. December 7, 1946.

A. December 7th? Toward the later part of 1946, yes.

Q. Do you have any recollection of any definite dates?

A. Not any definite dates, no. Toward the later part of 1946.

Q. Latter part of 1946?

A. That is right.

Q. Had you been contacted with respect to your 1945 assessment, the Kincaid assessment?

A. You mean the 1942?

Q. Well, the 1942 taxes, 1945 assessments.

A. The first word I had of the 1942 transferee assessments was in July of——

Q. (Interposing): Mr. Graham, just a minute. That isn't responsive to my question. I asked had you been contacted by the Revenue Service at that time, or around that time, with respect to these 1945——

Mr. Wagener: What time are you speaking of?

Q. (By Mr. Watson): Around the time of the transfer to Mr. Hansen? [94] A. Yes.

(Testimony of Warren C. Graham.)

Q. You had been? I am sorry; I may have been in error. Possibly I phrased that question wrongly and I apologize.

Where are you living at the present time?

A. 3255 Howe Street, Oakland 11.

Q. Are you paying the expenses of the attorneys for these proceedings? A. Partly, yes.

Mr. Wagener: I object to that as incompetent, irrelevant, immaterial; not proper cross-examination.

The Court: What is the purpose, counsel?

Mr. Watson: Well, we have in mind that the real party in interest is Mr. Graham and not the daughter, and that he has been paying for the——

The Court: As a matter of interest? Are you asking this as a matter of showing interest or bias? You may answer.

The Witness: I have not paid any.

Q. (By Mr. Watson): You have not paid any?

A. That is right.

Q. Have you made any arrangements to pay?

A. No.

Mr. Watson: That is all I have.

Examination by the Court

The Court: Mr. Graham——

A. Yes, sir. [95]

Q. During what period did Mr. Hansen work for you?

A. Mr. Hansen, your Honor, was my secretary

(Testimony of Warren C. Graham.)

for many, many years during a period of perhaps, off and on, over 15 years.

Q. I asked you during what period Mr. Hansen worked for you. Can you give me a definite answer to that?

A. Yes, sir. From 1932 to approximately 1939, then from 1945 until about 1948.

Q. Was Mr. Hansen working for you in 1946?

A. Yes, sir.

Q. During all of 1946?

A. I believe so, sir.

Q. Are you sure about that? Was there any time he wasn't working for you in 1946?

A. It is my recollection, sir, that he was working for me for all of 1946, that we had—there is a few months there that he left, and whether that occurred at the beginning of 1947 or last month or two of '46 I don't exactly recall at the moment.

Q. He states in his deposition he wasn't working for you in November and the first part of December, 1946. Is that true or not?

A. That could be possible, yes, sir.

Q. A moment ago I asked you if he worked for you, and you said all of 1946. Now, which is true?

A. Your Honor, it is my recollection that he worked for me [96] all of 1946.

If I may give a little explanation of that, that is this: Frank Hansen was very flighty and during all of the course of my employment with him he would walk out and come back. Whether one of

(Testimony of Warren C. Graham.)

those spells occurred at the end of 1946, at this moment I do not recall.

Q. Well, by "flightly" what do you mean? Irresponsible?

A. In that respect, yes, sir. That particular reason, I was in Washington and the man that had charge of the yard fired one of the telephone operators. Frank called me in Washington and said, "Adams has fired a telephone operator and if I am not going to have charge of the telephone operators I am leaving completely," and he walked out. Of course, when I got back I got hold of him and talked to him and he came back to work.

Q. Did this type of conduct happen a number of times? A. Yes, sir.

Q. Why did you decide to trust him with this property, then?

A. He had been a faithful and trustworthy employee of mine, in my employ for many years.

Q. What was the advantage of deeding the property to Hansen rather than to your daughter?

A. There was none. I am not an attorney. In that period I was working twelve, fourteen hours a day in the shipyard, perhaps more. [97]

Q. You say there was no advantage? Is that your answer?

A. Just my idea, is all, because I had discussed the matter of putting the property in trust for my daughter previously. That is the first thing came to my mind, so I said, "O.K., Frank, you

(Testimony of Warren C. Graham.)

keep this for my daughter until she comes out here.”

Q. Why didn't you deed it directly to your daughter?

A. Because I consulted no lawyer and that was my idea of how it should be done.

Q. Who made the deed?

A. My wife and I signed it.

Q. Who drew it?

A. I consulted, when we had agreed to that, I told Mr. Stimmel to transfer the property to my daughter.

Q. I thought you said you didn't consult an attorney.

A. When the deed was made. Whether he made the deed or whether I made the deed, sir, I don't recall. But I asked him to handle it.

Q. You mean Mr. Stimmel handled this transaction?

A. Yes.

Q. Drew the deed?

A. I couldn't truthfully say whether it was Stimmel drew the deed or whether I drew the deed or who drew the deed because I just don't recall.

Q. I show you Exhibit D which is the letter which contains [98] your signature and that of Mr. Hansen.

A. Yes, sir. That I wrote.

Q. You wrote that letter?

A. Yes, sir.

Q. Did this transaction occur on the date that the letter bears, August 1?

(Testimony of Warren C. Graham.)

A. Yes. I don't recall exactly the date, but the date was the date shown on this letter.

Q. Well, did it happen when the letter was written? A. Yes.

Q. The date it was written? A. Yes.

Q. You see, that is the date it says, "Accepted August 1, 1946." Is that the date Mr. Hansen signed it?

A. Yes. We both signed it in the office.

Q. How did it occur the deed is dated six days later?

A. In the process of the rush of business we had, it apparently took that much to get the thing together.

Q. What do you mean, get it together. Time from what? From August 1st when Mr. Hansen signed that? A. Yes.

Q. Why did he sign this if he didn't receive the deed at the time?

A. I wanted him to hold this trust with my daughter. I made the agreement with him there to do so, and after that [99] was done, then we went to Stimmel and had this particular deed done. The letter was done in our office to go with this, Exhibit D, then it was completed in Mr. Stimmel's office.

Q. Who is Bob Haynie?

A. Bob Haynie is at the present time Haas & Haynie, the contractors.

Q. Was he then working for you?

(Testimony of Warren C. Graham.)

A. He was then working for me as an assistant. He is an attorney and was a notary at that time.

Q. He was a notary?

A. He was a notary and attorney, yes, sir.

Q. And an attorney?

A. Yes, he is, but not following the profession. His job with me was to organize various companies, and for that purpose he employed an attorney in San Francisco, Bergen Van Brunt, to come over to our office and form these various companies and keep the business straight legally. [100]

Q. Did he draw this deed?

A. No, sir. That much I remember. Bob Haney had nothing to do with the house.

Q. Was he working for you on a full time basis?

A. Yes.

Q. Bob Haney was?

A. Yes, sir. He was in the war, in the Navy, and an attorney in Oakland who was a friend of mine wrote me and asked me to hire him, and I hired him when he got out of the Navy. Not as an attorney, but just as an employee.

Q. When this deed was secured, August 6th you say, was Mr. Hansen there? A. No, sir.

Q. How did the deed get to Mr. Hansen?

A. Mr. Stimmel handled that matter from then. Mrs. Graham and I signed it in Mr. Stimmel's office.

Q. Did you give instructions as to what was to be done with the deed?

A. That I don't recall, sir, at this late date.

(Testimony of Warren C. Graham.)

Q. Well, do you recall whether you told him to record it or not to record it?

A. No, sir, I don't think any mention was ever made of that at all. Mr. Stimmel had been my attorney when I first came out here. He organized the repair company, the limited partnership, and I went to him with this. [101]

Q. To go back again to your daughter, you said that she was—Do you recall approximately the year she was born?

A. No, sir, I don't.

Q. I said approximately the year she was born?

A. She is 30. I believe she is about 33 or 34 years old now. That would make it about 1920.

Q. So that in 1946 she would be 26 years old.

A. Yes, sir.

Q. Now, to go back again as to what the reason was for not deeding it to her if you wanted to give it to her?

A. Not deeded direct, you mean?

Q. Yes.

A. I have only had, your Honor, one piece of real estate in my life, and that was in 1900 in New Orleans. They had these notary publics who are different from other notary publics in Louisiana at the time.

Merely based on my own assumption, I had assumed the buyer had to sign the acceptance on the deed, because I never had it before, and in the press of business of the shipyard—I was there in the day, I was there in the night, I was there mornings—and I told my daughter on her birthday, which was May, and as time dragged along I merely said to

(Testimony of Warren C. Graham.)

Hansen only to take this in trust for my daughter and when she was ready to come out here we would turn it over to her.

Q. When did you buy the property? [102]

A. October, 1945.

Q. How much did you pay for it?

A. Approximately \$33,000.

Q. Was it paid in cash? A. No, sir.

Q. How much of a loan was there on it?

A. \$20,000.

Q. Was there \$20,000 on it—when was that paid off?

A. Subsequent to the gift. Subsequent to my daughter's birthday.

Q. Before August, 1946, or after?

A. It was after, sir. I am not certain. Around that time, but how much I don't remember.

Q. Do you mean within a month or two of August, 1946, it was paid?

A. Two or three months, something like that.

Q. In any event, was it all paid by December, 1946?

A. Paid up in December, 1946, sir? I am almost certain, sir, that it was.

Q. In talking to your daughter about this did you tell her that the property was or was not clear; in other words, that there was a loan on it or was not a loan on it?

A. It was my intention that I would turn the property over to her free and clear, that I would pay the mortgage.

(Testimony of Warren C. Graham.)

Q. Who was the money borrowed from? [103]

A. The Central Bank.

Q. The Central Bank? A. Yes, sir.

Q. Did you say when that was paid off, Mr. Graham?

A. It was the latter part of 1946. The exact date I couldn't say.

The Court: All right.

Mr. Wagener: I have just one more question at this time, Mr. Graham:

Q. What is your relationship with Mr. Hansen now? Is he friendly to you or unfriendly?

A. He is very unfriendly, very bitter.

* * *

Examination by the Court
(Resumed)

Q. When did Mr. Hansen finally leave your employ, do you remember?

A. He left only three times after that other episode, and [104] he left my employ in 1948.

Q. What time in 1948, do you recall?

A. January of 1948. At that time he wasn't working as my secretary, but in the Graham Aviation Company. Working in the same office, however, in the company which I had owned.

Q. After he left your employ—you say it was in January of 1948, finally? A. Finally, yes.

Q. Where did he go then?

A. He went to Los Angeles and we worked together on some business transactions, but at that

(Testimony of Warren C. Graham.)

time he wasn't—I do not consider him being in my employ.

Q. Where was he, do you know, in May of 1948?

A. May of 1948?

Q. Yes. A. He was in New York, sir.

Q. Did you write to him there?

A. Yes, sir, wrote to him and talked to him, because he had gone and——

Q. Did you write to him in connection with this deed in May of 1948?

A. I don't think that I wrote him in connection with the deed. I may have talked to him on the phone in connection with the deed.

Q. How did the deed get back there for him to sign? [105]

A. This deed was—I prepared those two deeds and sent it to him.

Q. You prepared the deed? A. Yes.

Q. Yourself?

A. I am certain that I did, sir. Almost certain, sir. He had asked me to do so and I did.

Q. Who had asked you?

A. Frank Hansen.

Q. Had asked you to prepare it? A. Yes.

Q. Why did he want you to prepare it?

A. That I couldn't say. My daughter had written him requesting him in accordance with this trust to turn over the property to her. I could have done it all. I don't exactly recall too well.

Q. Well, after this deed from you to Hansen was

(Testimony of Warren C. Graham.)

recorded and came back from the County Recorder's office, what happened to it then?

A. As I recall the thing, it went to Mr. Stimmel's office. Whether he turned it over to Hansen who turned it over to me, or whether to me, I don't recall.

Q. You don't recall whether he gave it to you or who?

A. I say I don't know whether he turned it over to Hansen [106] or me. I do not recall.

Q. In the year 1947 who paid the taxes on this property?

A. The taxes for 1947 were paid by my daughter.

Q. How was that done?

A. She paid them by check with the Alameda County Recorder's office, or Clerk.

Q. How did she know the amount of the taxes?

A. Your Honor, the 1945 taxes, the 1946 and 1947 taxes were not paid. I didn't pay any taxes. They became by default, and my daughter paid the 1945, I am sure, and 1946, 1947, 1948 and 1949, up to this time, paying the present taxes together with the back taxes at the same time.

Q. She paid it all at the same time?

A. Yes.

Q. How did she know the amount of that?

A. They sent her a bill, I think.

Q. They sent her a bill? A. Yes.

Q. From the Tax Collector's office?

A. The first taxes were in 1945 or 1946. The

(Testimony of Warren C. Graham.)

originals, naturally I got—received the taxes. But those were not paid. She went down—I believe she went down—I believe she went down to the Tax Recorder's office and made an agreement with them in regard to the payment.

Q. When did she do that? [107]

A. That I couldn't say, sir.

Q. Well, when did she come out here to live?

A. She came out to live in 1948.

Q. I am talking about the 1947 taxes.

A. The 1947 taxes, your Honor, were not paid, if I remember correctly, until 1952.

Q. Until 1952? A. Yes, sir.

Q. Why was it that you allowed the taxes to go delinquent, we will say, in December of 1946 and April of 1947?

A. That would be another ignorance on my part. Not having owned any property, I didn't pay the taxes. I let them go. Because I had other things to do, I didn't pay them, and after they were accumulating, she went down and made a deal with the Tax Collector to pay them.

Q. Was it by reason of any financial stringency you allowed the taxes not to be paid?

A. I don't think that was the trouble at the time, sir.

The Court: All right.

Mr. Wagener: I have no objection to that transcript insofar as it relates to the property here in question or this transaction. [108]

THOMAS H. GRAHAM

called as a witness on behalf of the plaintiff; sworn.

The Court: State your name, please.

A. Thomas H. Graham.

Direct Examination

By Mr. Watson:

Q. Mr. Graham, where do you reside at the present time? A. In Tacoma, Washington.

Q. What is the nature of your present employment? [109]

A. I am employed by the Internal Revenue Service in Seattle.

Q. In the year 1950 where were you employed?

A. At Tacoma, Washington.

Q. What was the nature of your employment?

A. Internal Revenue Service.

Q. In or around November of 1950 were you so employed? A. I was.

Q. I will show you Government's Exhibit 4 and ask you if you are familiar with that document?

A. I am.

Q. Were you the person who secured Mr. Graham's signature on that document.

A. Well, I secured Mr. Graham's signature on some collection waivers—a collection waiver. I don't have any way of telling whether this is the particular one or not.

Q. I have a letter here that is addressed to the Hon. James G. Smythe, Collector of Internal Reve-

(Testimony of Thomas H. Graham.)

nue, Post Office Box 967, San Francisco, and it is signed by Thomas H. Graham.

Mr. Watson: I would like to have this marked for identification, please.

The Court: Exhibit 12 for identification.

(Letter referred to above was thereupon marked Plaintiff's Exhibit No. 12 for identification.)

Q. (By Mr. Watson): Mr. Graham, I will ask you if you will identify that letter. [110]

A. Well, that is a letter written by—dictated by me and signed by me, dated November 22nd, 1952.

The Court: What year?

A. 1950.

Q. (By Mr. Watson): And what is the date on the collection waiver?

A. November 21st, 1950.

Q. Now, with respect to the waiver you secured from Mr. Graham, can you tell us the circumstances surrounding that securing of his signature on the waiver?

A. Well, at that time I was division chief in Tacoma, and we received some waivers from the California District for signature.

The Court: I don't hear you. Speak up.

A. I said we received some waivers from the California District for signature. We were to take them over and get Mr. Graham's signature on them, and subsequently I did that.

Q. (By Mr. Watson): When you took these waivers over, what transpired at the prison?

(Testimony of Thomas H. Graham.)

A. Well, after getting over there, the usual procedure; I went into the office, and there is a waiting room there, and the guard brought Mr. Graham in and I gave him the waivers and he signed them.

Q. At that time were you familiar with the waivers? Had you examined the waivers? [111]

A. Oh, yes.

Q. After looking at this waiver that is marked Exhibit 4 for the Government, does that refresh your memory at all?

A. Well, I recall that they were income tax waivers, and had some, I would assume—well, of course I can't—I would assume that is the one.

Mr. Wagener: I will ask that go out as calling for a conclusion of the witness.

The Court: After you got the waiver signed, what did you do with it then?

A. I mailed them back to the district in California.

The Court: With a letter or without?

A. Yes, with a letter of transmittal. They had a letter of transmittal.

The Court: In which you sent the waiver back to San Francisco? A. Yes.

Q. (By Mr. Watson): Do you recall on the basis of your examination of this proposed Exhibit 12 approximately the date that you went to the Federal Penitentiary?

A. It seem to me that this was in the fall, but I couldn't swear as to the date. If that is the date of the letter, I would swear that is it.

(Testimony of Thomas H. Graham.)

The Court: How long after you went to the penitentiary did you write the letter sending the waiver down to San [112] Francisco, approximately?

A. I presume it may have been within a week's time, and may have been the next day.

Mr. Watson: We would like to offer this letter in evidence.

Mr. Wagener: I will object to it upon the basis that this witness has not definitely identified it as being connected with this particular waiver.

The Court: Well, let me see it. It may be admitted. Objection overruled.

(Whereupon, document previously marked Plaintiff's Exhibit No. 12 for identification was admitted into evidence.)

Mr. Watson: I have in my hand a copy of a letter of November 16, 1950, addressed to Hon. Clark Squire, Collector of Internal Revenue, Post Office Box 1619, Tacoma, Washington. It is an unsigned letter, but it bears the initials or the names of James G. Smyth on the bottom. I would like this marked for identification.

The Court: Government's Exhibit 13 for identification.

(Letter referred to above, 11/16/50, was marked Plaintiff's Exhibit No. 13 for identification.)

Q. (By Mr. Watson): Mr. Graham, I will show you this letter and ask you if you will look it over

(Testimony of Thomas H. Graham.)

for a minute. Now, on the basis of this letter——
Has this letter refreshed your [113] recollection?

Mr. Wagener: Just a moment. I object to that on the ground that there has been no testimony by this witness that he ever received this letter or ever saw it heretofore.

The Court: There hasn't been any yet, no.

Q. (By Mr. Watson): Mr. Graham, I will ask you if you recall receiving or seeing the original of that letter.

A. All I can say is that we did receive instructions to have these waivers signed and that—no, I can't say that I have seen the original of it, no.

Q. Is your letter of Nov. 22nd written in response to and does it refer to this letter or to the information contained in it?

Mr. Wagener: I object to that as being complex and compound. Are you asking whether it was written in response to it, Mr. Watson?

Mr. Watson: Let me phrase it this way:

Q. Showing you Government's Exhibit 12, I will ask you if your letter of November 22nd refers to a letter from the Collector in San Francisco dated November 16, 1950? A. Yes, it does.

Q. Will you tell the Court what date the letter, proposed Exhibit 13, bears?

A. November 16th.

Q. Is that letter from the Collector here in San Francisco? [114]

A. Yes, that letter was from the Collector James Smyth.

(Testimony of Thomas H. Graham.)

Q. And does that letter refer to collection waivers for 1942? A. It does.

Mr. Watson: Well, we will offer this in evidence.

Mr. Wagener: To which we object, your Honor, on the ground that it is a copy. There is no sufficient foundation laid. If there is an original, it must be in the hands of the Department of Internal Revenue and should be introduced. It is an inter-department letter.

Mr. Watson: Your Honor, we in our subpoena to Mr. Graham asked him to bring in the copies of any correspondence he had in connection with these waivers, and Mr. Graham informed me that he had searched his records and——

The Court: Well——

Mr. Watson: ——he can't find the originals, the reason being that when the Revenue Service was reorganized in the recent reorganization, these old papers were thrown aside.

The Court: Well, that may be, but this witness has not in any way identified that letter yet. It seems very difficult to refresh his recollection. The objection is sustained. [115]

* * *

Cross-Examination

By Mr. Wagener:

Q. Mr. Graham, don't you recall that the waiver that you obtained from Warren C. Graham related to a small tax in the amount of approximately \$175? A. No, I don't.

(Testimony of Thomas H. Graham.)

Q. Do you recall having a conversation with Warren C. Graham at that time, at the time you secured some waivers from him?

A. I remember talking to him, yes, sir.

Q. Do you recall his saying to you that he wondered why the Department would go that far for a \$175 tax waiver?

A. No, I don't recall that, sir.

Q. You don't recall any such conversation?

A. No, sir. [116]

* * *

CATHERINE YOUNG COBB

called as a witness on behalf of the defendants;
sworn.

Direct Examination

By Mr. Wagener:

Q. State your name, please.

A. Catherine Young Cobb.

Q. What is your residence, Mrs. Cobb?

A. Americus, Georgia.

Q. You are the daughter of Warren C. Graham,
are you, Mrs. Cobb? A. Yes, sir.

Q. And you are a defendant in this action?

A. Yes, sir. [121]

Q. You are the record holder of the title to the
property at 6035 Wood Drive in the city of
Oakland? A. Yes, sir.

Mr. Wagener: This is merely preliminary. I
don't mean to lead the witness.

(Testimony of Catherine Young Cobb.)

Q. You are the same Catherine Young Cobb named in the deed from Frank Hansen to Catherine Young Cobb, is that correct? A. Yes, sir.

Q. Mrs. Cobb, was your father, Warren C. Graham, at any time indebted to you?

A. Yes, sir.

Q. Was he so indebted to you in the year 1946?

A. Yes, sir.

Q. What was the nature of that indebtedness?

A. I don't remember the exact amount. It was around, I think, \$3,000, I believe, that I had loaned him after I had worked in New York for his company, and he had asked me—written me to lend him this money to use in the business, and I did so.

Q. Did you have any note? A. Yes, sir.

Q. Did that note provide for interest?

A. As I remember, it did.

Q. By the way, the question was asked of your father [122] yesterday and he wasn't sure. What was the date of your birth, Mrs. Cobb?

A. May 16th, 1922.

Q. 1922? A. Yes.

Q. Are you familiar with the property at 6035 Wood Drive? A. Yes.

Q. When did you first become familiar with that property? A. When my father bought it.

Q. Were you here at that time?

A. That is right. I was working in the shipyard, and we had gone, oh, for a period of a month or so, gone around. And I had always gone with him to look at different houses when he was interested

(Testimony of Catherine Young Cobb.)

in buying one. Mrs. Graham was absent during that time, mostly in L. A., or when he bought the house she was in New York.

Q. When was this?

A. He bought the house, I believe, around October of 1945.

Q. Were you actually with him when he did buy the house?

A. I was with. Well, I don't know that I was with him when he went to the real estate and signed the papers, or whatever you do to buy a house, but I was with him when we looked at the house on the three or four occasions we did when he decided to buy it.

Q. When did you return to Georgia? [123]

A. In April of 1946.

Q. Subsequent to that time did you ever have a conversation with your father relative to the house?

A. Yes.

Q. And approximately when was that?

A. Well, we had talked about it, of course, before I left here. And Mrs. Graham, when Mrs. Graham saw the house she said——

Mr. Watson: Your Honor, I object to this testimony about what Mrs. Graham said when she saw the house. That isn't responsive to the question asked.

The Court: That may go out.

Q. (By Mr. Wagener): When did you and your father actually discuss the house?

A. Well, he had discussed it before I left here

(Testimony of Catherine Young Cobb.)

and then, as I recall, I believe he called me on the phone and talked about it when he said he was going to get a deed.

Q. When did that conversation take place, if you recall, when he said he was going to get a deed?

A. As I recall it, I believe it was on my birthday in the same year, 1946.

Q. That would be May 16th, 1946?

A. That is right.

Q. What did he say to you at that time about giving you the house? [124]

A. Well, I believe he said that as we had talked about it before I left here, and that since Mrs. Graham didn't like the house and they had—in other words, most of what he said on the telephone was based on what we'd said before I left here.

Q. What was the result of that conversation?

A. I said that, as I recall, that I wouldn't take the house unless he—we would forget about this note that I had, and under those conditions then I would take it.

Q. What did you then do about the note?

A. Well, at a later date I tore it up.

Q. Did you at some time after that get a deed to the house yourself?

A. That's right.

Q. Do you remember about when that was?

A. It must have been some time in May of 1948.

Q. You had that deed from—who did that deed come from?

A. Well, that was the deed from Frank Hansen to me.

(Testimony of Catherine Young Cobb.)

Q. Mrs. Cobb, I show you what purports to be a signed carbon copy of a letter dated at Athens, Georgia, April 2nd, 1948, addressed to Mr. Frank Hansen, 1155 California Street, San Francisco. Can you identify that letter?

A. Well, as I said in the deposition, I don't actually remember on April 2nd, 1948, sitting down at the typewriter and writing this particular letter, but I would certainly [125] swear I did write this letter, and it is certainly my signature and it is the way I write a letter and certainly looks like it was written on my typewriter. I would certainly say I did write that.

Q. That purports to be a copy of a letter written to Frank Hansen in which you request he convey the property to you in accordance with his agreement with your father?

A. That is right.

Mr. Wagener: I would like to offer this in evidence as Defendant's Exhibit next in order.

The Court: Exhibit G.

(Whereupon letter of 4/2/48 referred to above was admitted into evidence as Defendant's Exhibit G.)

Q. (By Mr. Wagener): I next show you, Mrs. Cobb, two deeds bearing date May 20, 1948, from Frank Hansen, a single man, to Catherine Young Cobb, a married woman, marked as recorded in the office of the County Recorder of Alameda County on May 28, 1948. I will ask you if you will identify those two deeds.

(Testimony of Catherine Young Cobb.)

A. Yes, these are the deeds from Frank Hansen to me which I received in 1948.

Q. Both of these deeds refer to different portions of the property at 6035 Wood Drive, is that correct?

A. Well, I believe one of them is to property around the corner. [126]

Q. But it was all part of the same big parcel, is that correct?

A. No, two different parcels.

Q. I see. But one of them is the property at 6035, and that is this larger document?

A. Yes, and a small vacant lot.

Q. A small vacant lot around the corner?

A. That is right.

Mr. Wagener: I will offer these in evidence, your Honor, as defendant's exhibit next in order. They have been offered together.

The Court: Defendant's Exhibit H-1 and H-2.

(Deeds referred to above were thereupon admitted into evidence as Defendant's Exhibits H-1 and H-2.)

Q. (By Mr. Wagener): Where did you receive these deeds, Mrs. Cobb, do you remember?

A. In Georgia.

Q. In Georgia? And what did you do with them then? A. I sent them to my father.

Q. You sent them to your father?

A. That is right.

Q. For recording, is that right?

(Testimony of Catherine Young Cobb.)

A. That is right.

Q. Now, you were asked at the time of the deposition and [127] agreed to bring today any evidence you had of payment of taxes on the property, Mrs. Cobb. Do you have such evidence with you?

A. Yes. I do not have the cancelled check because, as I said at the time of the deposition, all of my personal papers had just been shipped back to Georgia the week before my deposition was taken, and if I went back to Georgia before the trial I would be glad to get the cancelled check. I did not do that. But I do have here the receipts for the taxes on the property for 1946 and—should I explain what happened about the taxes?

Q. Yes, if you will, please.

A. First of all, February of 1952, I received this letter from the Tax Collector's office in Alameda County telling me that the property would be deeded to the State of California for delinquent taxes for the years 1946 and 1947 unless they were remitted in full, and if I wanted to start an installment plan on the taxes to come to see them, and it had to be done before July 1st, 1952. So I went.

Q. Just a moment.

Mr. Wagener: May we mark this for identification, counsel? I will ask that this letter from Edwin Meese, Jr., Tax Collector, dated February 8, 1952, and addressed to Catherine Y. Cobb, 6035 Wood Drive, Oakland, California, be marked for identification. [128]

(Testimony of Catherine Young Cobb.)

The Court: Exhibit I for Identification.

(Letter of 2/8/52, Meese to Cobb, referred to above, was marked Defendant's Exhibit I for identification.)

The Witness: So I went down and found out that by paying the taxes for 1952 first, then they would set up a plan whereby I could pay the taxes for 1946, 1947, 1948, 1949, 1950, on a five-year installment plan.

So it shows here that on June 30, 1952, I went down and paid them the amount of \$925.63, and that was the taxes, or on the taxes for the years 1946 and '47.

As I said, I do not have the cancelled check with me because that had been shipped—all my furniture and everything had been shipped to Georgia. But looking through my check book, I find this check was written by me, and it was my check No. 109 as of that date, June 30th, on my account at the American Trust Company in Berkeley.

Q. You wrote this all on check No. 109?

A. I did.

Q. When did you discover that?

A. I don't know whether day before yesterday or yesterday when I was looking through my checks.

Q. Your check stubs? A. Stubs.

Mr. Wagener: I would like to offer that in evidence as [129] being a receipt given for the taxes

(Testimony of Catherine Young Cobb.)

for the year 1946-1947, the receipt being to Catherine Young Cobb.

The Court: Exhibit J.

(Check stub referred to above was admitted in evidence as Defendant's Exhibit J.)

The Witness: I also have here the receipt that was for the taxes for this delinquent tax business for 1946 and 1947, and I notice when I paid the payments on March 31st, 1953, one paper says the taxes were 1946-1947 and one they were 1945-1946.

Then I have it also for 1954 and 1955. And I have written down the check number that I made the payments on, like on 1953 it was my check No. 172 and 1954 my check number 228, written on the dates for that time on the receipt. And I believe on each occasion I personally went down myself and paid them and got the receipts.

Q. (By Mr. Wagener): Do these cover the same taxes, Mrs. Cobb, as that other receipt?

A. It is the next year's installment.

Q. The next year's installment?

A. Yes. In other words, there is one more installment to be paid next year, which will be the last installment to be paid on this delinquent taxes for 1946 and 1947. And then each year before you make those delinquent payments, you have to pay the present year's tax, and 1953, 1954, 1955, the [130] present years' taxes, were paid, you know, at the right date.

Q. These were all paid by you?

(Testimony of Catherine Young Cobb.)

A. That is right.

Mr. Wagener: I would like to offer these two receipts in evidence as the defendant's exhibit next in order.

The Court: Exhibit K.

(Thereupon, two receipts referred to above were admitted into evidence as Defendant's Exhibit K.)

Mr. Wagener: I think that is all I have at this time.

Cross-Examination

By Mr. Watson:

Q. Mrs. Cobb, it is your testimony that you are at the present time residing in Georgia, is that correct? A. That is correct.

Q. In the year 1946 where did you reside?

A. I came out here in April of 1945 and stayed until April of 1946.

Q. You were here continuously during that period?

A. That is correct. I believe I went to Georgia during Christmas of that year for a period of two weeks. I believe that is the only time I left California.

Q. But from April of 1946 until December of 1946 you were living in Georgia, is that correct?

A. I went back to Georgia because my husband was rather——

The Court: Just answer the question. [131]

(Testimony of Catherine Young Cobb.)

A. Yes, sir.

Q. (By Mr. Watson): In the year 1947 where did you reside? A. In Georgia.

Q. In the year 1948 until May of that year, where did you reside? A. 1948?

Q. Until May of 1948? A. In Georgia.

Q. In Georgia? Then it is your testimony that during the balance of 1946, 1947 and the first part of 1948 you resided continuously in Georgia?

A. Yes, sir.

Q. I think that in your deposition you gave on the 27th of July you testified that you were in California for a short period.

A. About five to ten days.

Q. About five to ten days?

A. Yes, in August of 1946.

Q. During that period of time did you see Mr. Hansen?

A. I don't recall whether I did or not.

Q. I believe in your earlier testimony at your deposition you testified that you did know Mr. Hansen. A. That is correct.

Q. In what connection did you know Mr. Hansen?

A. Well, I knew Mr. Hansen in New York before my father [132] moved out here, and I certainly knew him when I was out here because he was working in the same shipyard that I was working in.

Q. You were regularly employed in the shipyard? A. Yes, I was the year I was here.

(Testimony of Catherine Young Cobb.)

Q. You were drawing a salary?

A. That is right.

Q. Do you recall what your salary was?

A. I believe it was around \$400 a month.

Q. Do you recall approximately how old Mr. Hansen was at that time?

A. I have no idea.

Q. But you say you know him reasonably well, is that right?

A. That is correct.

Q. With respect to these payments on property, now in 1946 did you receive any bill for the real estate taxes?

A. Did I?

Q. In 1946?

A. No.

Q. And you didn't pay any taxes in 1946?

A. No.

Q. In 1947 did you receive any bill for the real estate taxes on the property?

A. I don't remember when the first—I just don't remember when the first time was that I did receive—when the taxes [133] started coming to me.

Q. Do you have any documents that would show when you were billed for the taxes in 1947?

A. I just have the receipts and the cancelled checks.

Q. But you don't have any billings?

A. No.

The Court: That receipt and cancelled check is in 1952, isn't it?

A. That is right, sir.

The Court: Prior to that time you had paid no taxes on the property?

(Testimony of Catherine Young Cobb.)

A. That is right.

Mr. Watson: Could I see those receipts, your Honor?

Q. Mrs. Cobb, I will show you the document that has been marked as Defendant's Exhibit J. It has to do with the real estate taxes for 1946 and 1947. I will ask you if you will read the top line about who the taxes are assessed to.

A. "W. C. and Agnes B. Graham."

Q. With respect to the taxes shown on Defendant's Exhibit K, who do they show the taxes were assessed against?

A. The same.

Q. Now, do you have any documents that show who the taxes were assessed against for the year 1948?

A. 1948? I don't know whether I do or not.

Q. Do you have any independent recollection of any document [134] that indicated who the taxes were assessed against for the year 1948?

A. I would have to see the documents before I could remember. I remember—I don't remember what year it was—I remember my going down to the Alameda County and telling them that they should be assessed to me, but I don't remember when that was.

Mr. Watson: Could I see the deed, the two original documents, which were defendant's exhibits?

Q. (By Mr. Watson): Mrs. Cobb, I will show you these two deeds and ask you, do you know that those show that they were recorded at the request of the grantee?

A. Do they say that?

(Testimony of Catherine Young Cobb.)

Q. Yes.

A. It says, "Recorded at the request of grantee."

Q. Did you personally take these documents in and have them recorded?

A. I believe I testified I was in Georgia at the time and sent them to my father to have them recorded.

Q. Then he had them recorded for you at that time, is that correct?

A. I presume that he did.

Q. Do you recall that in your deposition you testified that you had never had—you had never owned any real estate until the Oakland property was transferred by deed to you in 1948? [135]

A. That is correct.

Q. And do you also recall that you testified that as a result you were not familiar with real estate transactions?

A. That is correct.

Q. Do you also recall that your testimony was to the effect that you knew nothing about deeds?

A. That is correct.

Q. Do you recall that in your deposition testimony you stated then you were certain the letter of April 2nd, which was just received in evidence, was written by you?

A. That is correct.

Q. And you so testified, today is that correct?

A. That is correct.

Q. You also at the time of taking the deposition and at the present time said that you drew that conclusion as a result of looking at the form of the

(Testimony of Catherine Young Cobb.)

letter and the makeup and the heading and the closing salutation, is that correct?

A. That is right.

Q. I hand you this letter and ask you if you will again read the letter.

A. "In accordance with the terms and conditions——"

The Court: Just read it to yourself.

A. Oh.

Q. (By Mr. Watson): On the basis of the actual content of that letter, and considering your unfamiliarity with [136] transactions involving transfers of real estate, is it still your testimony that you wrote that letter—you yourself wrote that letter?

A. That is right. I say that I don't know anything about deeds. I don't know a whole lot about deeds, but I have certainly—first of all, I went to business school for three different——

Q. Never mind. I just asked a simple question.

The Court: You may finish the answer.

A. I was just going to say I had certainly had experience in writing business letters in the past, and in fact, I used to teach shorthand and typewriting and writing business letters, I certainly have heard what a deed was, certainly knew deeds had be be recorded.

When I say I wasn't familiar with things about deeds, I certainly—I mean, I don't know a whole lot because I had never had dealings with a deed before. But I certainly think it doesn't take much to write a letter of that particular type that I wrote

(Testimony of Catherine Young Cobb.)

there, especially when one has had experience in writing letters and being a secretary.

Q. (By Mr. Watson): Now, in connection with this transfer and your conversation with your father on your birthday, did you consider at that time that this property was a gift to you?

A. Well, I would say I considered it partly a gift, and then [137] I paid for part of it.

Q. Isn't it true that in your deposition you stated, in substance, that you knew the value of the property was greatly in excess of the amount of your note and that consequently you actually considered it a gift?

A. I believe I said that I don't know that I knew how much the house actually cost at that time. I don't know when I found that out. I certainly know it now.

I said that I knew the house cost more than \$3,000, yes, and that \$3,000, if I was going to cancel the note which I—for money which I had given my father, I certainly think I had paid for part of the house. I think I said I considered it partly a purchase and partly a gift.

Q. Now, with respect to this note, approximately what was the date that that note was received by you?

A. As I said at the time of the deposition, I don't remember.

The Court: Never mind what you said then. That doesn't matter. Just answer the question now, please.

(Testimony of Catherine Young Cobb.)

A. All right, sir, I don't remember.

Q. (By Mr. Watson): You don't have any recollection, Mrs. Cobb? Now, do you have any recollection about the conversation that resulted in your loaning the money to your father?

A. Conversation with him?

Q. Yes.

A. Well, I believe I don't remember whether he wrote me or [138] whether he talked to me on the phone about it.

Q. Did you prepare the note?

A. No, I believe he did and sent it to me.

Q. And did you ever collect any interest on that note? A. No.

Q. Did you ever take any steps to collect the note?

A. I believe on several occasions I asked him when he was going to pay me the money he owed me.

Q. And you have testified that you don't now have any copies of that note? A. No.

Q. Can you recall what sort of note it was?

A. What do you mean by that?

Q. Well, how was it to be paid?

A. I don't remember.

Q. Did you ever talk to your father about why the property was placed in trust?

A. Not that I recall.

Q. Did you ever talk to Mr. Hansen about the trust? A. I don't remember.

Q. In 1948 had you had any conversations with

(Testimony of Catherine Young Cobb.)

Mr. Hansen? A. About the——

Q. Just any conversations at all?

A. Well, I saw him every day in the shipyard.

Q. In 1948? [139]

A. Oh, 1948. Not that I know of.

Q. Did you then know where he lived, as a matter of fact?

A. Well, I must have if I sent the letter to him out here.

Q. Answer the question, did you know then?

A. I don't remember what I knew then. I mean, I must have if I wrote him a letter out here.

Q. Did you make any inquiries before you wrote that letter as to where Mr. Hansen was then?

A. I don't remember.

Q. Had you ever visited him in his residence?

A. I believe I was there on one occasion.

Q. When was that?

A. I believe I went there with my stepmother and my father one evening.

Q. In what year?

A. That would be, I imagine, 1946.

Q. Then over a period of two years you were still able to remember where Mr. Hansen lived?

A. I believe he and Mr. Haynie both lived in the same apartment house. That was in a very prominent place on California Street on Nob Hill. It wasn't a hard place to remember where he lived.

Q. But you remembered the definite address at that time?

A. I am quite sure I must have put it down in

(Testimony of Catherine Young Cobb.)

my papers some place, his address, knowing that at some time I was going [140] to write him and ask him for the deeds.

Q. When your deposition was taken you were asked that, assuming that this Court did say that the property should be yours, legally in your name and free and clear of federal tax liens, would you feel any obligation to retransfer it to your father?

A. No, I would not.

Q. You would not? A. No.

Q. You don't feel any moral obligation to your father? A. No.

Q. What is the present financial condition of your father?

A. So far as I know, he has absolutely nothing.

Q. And for how long has he been in such a financial condition?

A. I would say since, well, certainly since 1950. I would say long before that, however. I would say—it was around 1948, I would say, that since then I believe he has, to my knowledge, only at one time made any money and that was on an export deal, shipping some asphalt to a foreign country. And to my knowledge, that is the only time in all those years that he has made one single penny, all that he has ever had, a single penny.

Q. But, in spite of those facts, this knowledge of his financial condition, you still wouldn't feel any moral obligation to sell the property and pay him part of it or give part of it [141] to him?

(Testimony of Catherine Young Cobb.)

A. I don't think so, no. I have helped him in the past since he hasn't had any money and hasn't been able to get anything started. I have certainly given him money. But so far as the actual house, I don't know what I would do, but I certainly wouldn't feel any moral obligation to give him part of it.

Q. Now, in your previous testimony in this deposition did you testify that the money that you loaned to your father came from earnings when you were employed by a patent attorney?

A. I believe I said I was working with this patent attorney who worked for my father. In other words, we were both working for my father's company.

Q. At the deposition didn't you testify that the money you used was money paid to you by the patent attorney?

A. I don't believe I did say that. If I did say that, I believe it was misinterpreted because that isn't what I meant. I worked for this patent attorney who worked for my father. We both worked for my father.

Q. Mrs. Cobb, at your deposition previously you were asked if you were paying the attorney's fees in this proceedings, and I believe at that time you testified that you didn't have any recollection whether you were or were not; is that correct?

A. I believe—— [142]

The Court: The record is the best evidence of what she said in the deposition.

(Testimony of Catherine Young Cobb.)

Mr. Watson: Well, your Honor, I didn't know we were going to have the deposition here.

The Court: The deposition of the party is always admissible and this is a party to the action. The record is the best evidence of what was said at that time.

Q. (By Mr. Watson): Mrs. Cobb, in connection with that examination, did we request you to bring in any cancelled checks you might have showing that you had paid the attorney's fees?

A. That is correct.

Q. Do you have those?

A. No. I said at the time if I stayed here I would not be able to get the cancelled checks because they were in Georgia, but if I went back to Georgia I could certainly send them back to you and would be glad to do so.

Mr. Wagener: Counsel, if you desire we can stipulate that the payments which she made were not payments of counsel fees. She made payments of—pursuant to a stipulation we had that the net amount of the rental of the house would be impounded, she made payments to me of the net amount of the rentals, put it in an account in the Bank of America in Oakland under my name and the name of the former Collector of Internal Revenue, under a trust holding agreement. Those are [143] the checks she sent to me.

The Court: Speaking of that deposition, counsel on both sides, is it offered in evidence?

Mr. Watson: It hasn't been yet.

(Testimony of Catherine Young Cobb.)

The Court: Will it be?

Mr. Wagener: I am perfectly willing it be offered in evidence.

The Court: Let's give it a number then.

Mr. Wagener: All we have, as I said before, is a copy of it. I don't know where the original is.

The Court: Mark it Government's Exhibit 14.

Mr. Watson: Your Honor, the deposition was taken at their request. I don't know whether it makes any difference.

The Court: It doesn't make any difference.

(Deposition of the witness entered into evidence as United States Exhibit No. 14.)

Mr. Watson: I have no further questions.

Mr. Wagener: That is all, Mrs. Cobb.

The Court: Just a moment.

Examination by the Court

The Court: In 1948, April 2nd of 1948, the date of this letter written to Mr. Hansen, prior to writing that letter had you ever talked to Mr. Hansen about this trust?

A. I don't recall. I really don't.

Q. When was the last time you had seen Mr. Hansen prior to [144] April 2nd, 1948?

A. I imagine it would have been when my husband and I came out here in the latter part of August of 1946. We were here for about ten days. It was either the latter part of August or first part of Sep-

(Testimony of Catherine Young Cobb.)

tember. It was between the summer and fall sessions in the University of Georgia.

I am quite sure I must have seen him then. I don't really remember, but I must have seen him then. That would be the last time I could have seen him.

Q. Then from 1946 when you were here for five or ten days——

A. That was in August. And of course I was here from January through April—April, 1945, to April, 1946, I was here. Then I came back in August for about ten days.

Q. When you were here in August for ten days, did you see Mr. Hansen and did you ever have any conversation about this trust?

A. I just don't remember. That would be the last time I could have seen him.

Q. Did you ever have any conversation with Mr. Hansen about this trust?

A. I don't remember. I don't think that I did.

Q. When did you learn that he was holding it in trust?

A. I don't remember whether my father told me on the phone that he was going to put it in trust until I would come out here to stay, or whether it was when we came out in August, [145] or the first of September, and we discussed it then. Could have been on the phone that he was going to do it, or could have been in August that he did do it.

Q. Well, you have no recollection about that at all?

(Testimony of Catherine Young Cobb.)

A. I just remember discussing it. I am quite sure we discussed it when I came out here in August of that year, that I discussed it with my father.

Q. What did you discuss? What was said?

A. I mean, my father just said he had gone ahead and given me the house and put it in trust with Frank Hansen until I decided to come out here to stay.

Q. Did you ask him why he did that?

A. I don't remember. I don't think—didn't make any difference to me one way or the other.

Q. Well, you were here, you said, the first ten days of August, 1946?

A. No, it was either the last week in August or first of September. It wasn't the first part of August. It was after summer school was out. My husband had been going to summer school and school started about the 15th of September. I might not have even been here the last day of August. Some time between the last of August and beginning of college in the fall.

Q. Did you get any documents at that time in connection with the house?

A. No, sir.

Q. Did you ever see any letter discussing the trust situation of this house which had been signed by Mr. Hansen?

A. Did I ever see a letter signed by Mr. Hansen about the trust of the house? I have seen it now. I

(Testimony of Catherine Young Cobb.)

have seen it recently, but whether I saw it then I don't recall.

Q. You have no recollection of seeing it?

A. I just don't remember. I could have. I just don't remember.

Q. Why did you write the letter in April of 1948, to Mr. Hansen?

A. Because my husband was getting ready to graduate and he decided he wanted to go to California to live, so we were coming out here, so I wrote him the letter.

Q. And addressed it where?

A. I addressed it where? I must have addressed to this address here in California.

Q. Where did you get that address?

A. Well, he always lived there when he was in California, I knew that. I must have had the address in my address book or my notes somewhere.

Q. Did you have it in your address book or notes somewhere?

A. I don't know. I must have. I had to get it from somewhere. This is a long time ago, so I don't want to say I did or didn't do something unless I really remember it. The [147] whole time I knew him out here he always lived there.

Q. When did you learn that he was in New York at that time?

A. I don't remember. It is all so long ago I just hate to say.

Q. Was he in New York in 1948 in the spring?

(Testimony of Catherine Young Cobb.)

A. I don't know. I must have thought he was in California if I sent the letter to him there.

Q. Did you ever learn that he was in New York at that time?

A. I don't remember. To my own knowledge, I just don't know.

Q. Well, did you ever see the deed that he signed?

A. To me?

Q. Yes.

A. Yes.

Q. At that time?

A. That is right. In Georgia.

Q. When did you first see that deed, those deeds?

A. When they were sent to me in Georgia in 1948 after I wrote the letter.

Q. He sent to you in Georgia?

A. That is right.

Q. Did he write a letter when he sent them to you?

A. I don't think so.

Q. You mean they just came in an envelope without any [148] accompaniment?

A. As I recall.

Q. Did you expect that would be what would happen?

A. Well, didn't make any difference to me one way or the other. I don't remember what I thought at that time.

Q. Did you look at the deeds when you got them?

A. That is right.

Q. Did you notice they were notarized in New York?

(Testimony of Catherine Young Cobb.)

A. I don't even know that now. I don't know that it is now.

Q. What did you do with the deeds?

A. I sent to my father.

Q. Did you write a letter at that time?

A. To my father?

Q. Yes. A. I must. I must have.

Q. Do you have a copy of that letter?

A. No, sir. I don't think—I don't ever write carbons when I write a letter to my father or friends or something like that. I never keep a carbon.

Q. You contend this was a carbon of a letter written Mr. Hansen?

A. Any business letter, I always keep a carbon of those.

Q. What was the advantage to you of having this property in trust with Mr. Hansen? [149]

A. I don't know. My father just said that was what he had done and that is what he was going to do. Didn't make any difference to me one way or the other. He said he wanted to do it that way until I came out here to live.

Q. Well, you, then, did not get the letter which had been signed by Mr. Hansen in which he accepted the trust, did you?

A. I don't believe so. I don't remember seeing it.

Q. How did you know the date of the trust? When did you learn that?

A. I don't quite understand what you mean.

Q. Your letter of April 2nd, 1948, refers to the

(Testimony of Catherine Young Cobb.)

trust dated August 1st, 1946. How did you learn the date of that trust?

A. I imagine my father must have told me that.

Q. And you remembered it for two years without any written record of it, did you, Mrs. Cobb?

A. I don't know. I don't know whether I wrote the things down and kept them to when I was going to write the letter. I don't know because it is so long ago I don't remember.

Q. You said you didn't get that letter that Mr. Hansen signed accepting the trust, and yet in that letter you speak of the trust dated August 1st, 1946.

A. That is right.

Q. How did you know that?

A. I must have made some record of it.

Q. Well, where? [150]

A. Well, I have all kinds of places where I keep records of different dates and things, a little book with things like that and different things.

Q. What kind of book did you put that record in, please?

A. I don't know. I say I must have had it because I must have known. My father must have told me. Maybe I saw the letter when I was out here the last part of August or first of September.

Q. I asked you a moment ago about that and you said you did not see it.

A. That is it. I don't think I did, but I might have. I don't want to say I knew it that way because I just really, honestly and truly can't remember. I am just trying to say what I really do re-

(Testimony of Catherine Young Cobb.)

member but when I don't remember, that is all I can say.

Q. You were asked a little while ago the approximate date of the note your father signed. Do you know that? A. No, I don't remember.

Q. When did your father come to California from New York?

A. I just don't know. It must have been in—I don't know whether it was 1944 or whether it was 1945. I don't remember.

Q. Where were you when this note was given to you? A. In Georgia.

Q. You were not working for your father then?

A. Not then. I had been, but I wasn't then. [151]

Q. When did you work for your father?

A. I believe I worked for him——

Q. In New York, I mean.

A. Yes. As I recall, I visited my father in New York in the summer of 1938, 1939, and one summer I didn't go up there, whether 1940 or 1941 I don't remember. Then I was up there in the summer of 1942 until December of 1942. Then I was up there——

Q. (Interposing): Were you working for him at that time? A. That is right.

Q. I am trying to find out not when you visited there but when you worked for your father.

A. I worked for him, I think, all except the first two summers that I was up there.

Q. Well, when would be the last time you worked for him?

(Testimony of Catherine Young Cobb.)

A. I was trying to think if I was up there in 1943. No, I believe the last time I worked was in December—January of—that would be January of 1943. Either December or January.

Q. And if you were there in January, 1943, how long a time continuously before that had you worked for him?

A. Since June. And the year before, that would have been from June to September.

Q. And what salary were you getting?

A. As I recall, I believe it was about \$800 a month.

Q. And you were then 19 or 20 years old? 20 years old? [152]

A. That's right.

Q. How many months did you work for him at \$800 a month?

A. Oh, let's see; it would be June, July, August. Well, I worked there from June through December, and then the summer before I had worked up there from June till, say, the middle of September.

Q. At the same salary? A. I believe so.

Q. You were then 19, that would be—19 years old? A. That is right.

The Court: I have no further questions.

Mr. Watson: I would like to ask one or two more questions, your Honor.

(Testimony of Catherine Young Cobb.)

Cross-Examination
(Continued)

By Mr. Watson:

Q. Mrs. Cobb, have you had any conversation with an Internal Revenue agent in connection with this property?

A. In connection with this property?

Q. Yes.

The Court: Well, I think you should pinpoint it a little bit better than that, counsel, if there is such a conversation.

Q. (By Mr. Watson): Well, let me ask you, then, if you had any conversation with a Revenue Agent in the years 1950 or 1951, Would that [153] help?

A. I remember I talked to Mr. Cunningham at one time. Whether we said anything about the house I don't recall. I believe there was another gentleman with him. Oh, I have talked to him several times. I don't know that I said anything about the house to Mr. Cunningham or Mr. Mean or any of the other Internal Revenue people.

Q. You don't then recall that you told Mr. Cunningham that in substance and effect the government would never get this property from you?

A. I certainly never made any statement like that to Mr. Cunningham, no.

Mr. Watson: That is all.

The Witness: A. I don't recall ever having mentioned the house to him.

The Court: I have no further questions.

Mr. Wagener: That is all.

(Witness excused.)

Mr. Watson: We have, your Honor, our memorandum in connection with the validity of the 1945 assessments.

The Court: All right. We will take a recess at this time.

(Recess.) [154]

The Court: Proceed.

Mr. Wagener: Are we going to present that legal point now, your Honor?

The Court: In the brief period of recess I had the memorandum and looked at it. You have seen it?

Mr. Wagener: Yes, your Honor.

The Court: It would appear that in a case which was a Federal Supplement case, Commercial Credit vs. Schwartz, there was practically an identical situation and they held the assessment could not be attacked.

Mr. Wagener: One further thing I want to point out that I pointed out yesterday: that is, that nowhere in the government's proof so far is there any evidence that they sent a 90 day letter which is required to be sent before an assessment is made, and that during the period until ninety days after the receipt of such a letter has expired, the government can not make a valid assessment.

So far there is nothing in the proof that any 90 day letter was sent. Counsel was unable to show

anything from the exhibits he introduced yesterday to that effect.

Mr. Watson: The presumption is, your Honor, when an assessment is made that the 90 day letter—that all steps have been taken preceding the making of the assessment. The assessment is more or less in the nature of a judgment on those particular tax liabilities. [155]

The Court: In order to make a ruling on that, Mr. Wagener, I suggest that you make an offer of proof as to what you expect to prove so that that could be ruled upon.

Mr. Wagener: We offer to prove that Mr. Graham—rather, that neither Mr. Warren C. Graham, nor Agnes B. Graham were deed transferees of the Kincaid Company, and that as such no valid assessment of tax could ever have been made against them.

And that neither Warren C. Graham nor Agnes B. Graham ever received any 90 day letter from the Department of Internal Revenue, and from the government's exhibits, which purport to be a record of everything that was done, I respectfully submit there is no proof on their part that such letter was ever mailed to either Mr. or Mrs. Graham.

Mr. Watson: Your Honor, the United States objects to that proof on the ground that it is outside of the issues, and it is not relevant here. Further, it is our position that our proof does not need to go into the 90 day letter or any of those steps, that an assessment by law can not be made until such steps have been taken care of.

Mr. Wagener: It is up to the government to

prove that these steps were taken, in the face of testimony which I will offer that Mr. Graham nor Mrs. Graham ever received a 90 day letter in which case their time to contest the assessment would never have run. [156]

The Court: It would appear from this case that the requirement is that they pursue such administrative remedies as they have, if they contend the assessment was not proper; and it would appear from the cases cited that it is too late to attack those assessments. Objection to the offer of proof may be sustained.

Mr. Wagener: Provided—May I say this? That assumes the 90 day letter. If I can establish the first knowledge Mr. Graham had of this assessment was over a year later and the federal government has no proof of any 90 day letter, then his time to contest the assessment never expired. That is part of their steps, and I submit it is part of the government's proof to prove was properly taken.

The Court: Well, I still believe the objection should be sustained. You may recall that this assessment has also been held valid in another case which was tried in Los Angeles. While the decision doesn't discuss the point, this is the same assessment involved in this case that was involved in Los Angeles.

Mr. Wagener: That is true as to Warren Graham. I submit as to defendant Catherine Cobb, she is not bound by that case in Los Angeles because she wasn't a party therein. [157]

AGNES B. GRAHAM

called as a witness in her own behalf; sworn.

Direct Examination

By Mr. Wagener:

Q. You are Agnes Burke Graham?

A. Yes, sir.

Q. The wife of Warren C. Graham?

A. Yes.

Q. And you are one of the defendants in this action? A. Yes.

Q. For the purpose of saving time, Mrs. Graham, you heard the testimony yesterday of Warren C. Graham relative to the conveyance of this property at 6035 Wood Drive in Oakland, first to Mr. Hansen and finally to Catherine Young Cobb.

A. Yes.

Q. And if you were asked those same questions, would your testimony be substantially the same as to the conditions under which the deed was made?

A. Yes, sir.

The Court: Just a moment.

Mr. Watson: I think we will object to that.

The Court: The answer may go out. Make your objection.

Mr. Watson: We would like to object to that. I think Mrs. Graham's testimony should be in the record. [158]

Mr. Wagener: All right.

The Court: Objection is sustained.

Q. (By Mr. Wagener): Where were you, Mrs.

(Testimony of Agnes B. Graham.)

Graham, at the time that the property at 6035 Wood Drive was purchased?

A. I was in New York City.

Q. And when did you come to California after that?

A. I returned to California about December of 1945.

Q. And when did you first see the property at 6035 Wood Drive?

A. After I returned to California.

Q. And were you satisfied with the purchase of the property by your husband?

A. No, I was not. I was very displeased.

Q. For what reason?

A. Well, the house is not close to transportation. I do not drive an automobile, and it was inaccessible to public transportation and made it rather difficult on me. Furthermore, the type of house that he chose was larger and was situated in such a way it required a lot of work and would necessitate a lot of help.

Q. Whose suggestion was it that the property be transferred to Catherine Young Cobb, or for her benefit?

A. It was my suggestion during the period of early 1946, when my husband was practically commuting between California and Washington, D. C., on business relating to the shipyard. [159] I accompanied my husband the greater part of the time and I was a little worried because we flew most of the time.

(Testimony of Agnes B. Graham.)

Q. What did you suggest regarding the property?

A. I suggested that Warren and I give the house to Catherine since he and she had looked at it and apparently they both liked it.

Q. I show you Defendant's Exhibit D in evidence which is a letter from Warren C. Graham and Agnes B. Graham to Frank Hansen, and purporting to bear the acknowledgment of Frank Hansen. I will ask you, Mrs. Graham, if that is your signature appearing under Warren C. Graham's signature.

A. Yes, it is.

Q. "Agnes B. Graham." A. Yes.

Q. Do you recall on what date you signed that?

A. Well, evidently the date it is dated there in the letter.

Q. Is that your best recollection?

A. That is my best recollection.

Q. And showing you Defendant's Exhibit C, in evidence, that being a deed bearing date August 6, 1946, from Warren C. Graham and Agnes B. Graham, his wife, to Frank Hansen, a single man, I will ask you if that is your signature on that?

A. Yes, sir.

Q. Do you recall the date that that was signed by you? [160]

A. August 6th, 1946.

The Court: Well, do you recall that? Is that your answer or are you just reading the date from the deed?

A. Just reading the date from the deed; but I do

(Testimony of Agnes B. Graham.)

recall that date that it was signed in Mr. Stimmel's office.

The Court: Why do you recall that date?

A. There was a birthday in our family that particular date. Not our immediate family, but my immediate family, that recalls the date to my memory.

The Court: What birthday?

A. I have a sister who was born on the 6th of August.

The Court: How does that tie in with this date?

A. Well, it is just the date. I recall it was on my sister's birthday. I just recall that it was.

Q. (By Mr. Wagener): Mrs. Graham, I show you a tax collection waiver, one signed by Warren C. Graham—this is Government's Exhibit 4 in evidence—and two tax collection waivers introduced together as Government's Exhibit 6-D in evidence. These purport to bear your signature. I will ask you if you have ever seen those documents before.

A. Yes, sir.

Q. Do you recall when you first saw them, Mrs. Graham?

A. When an Internal Revenue agent came and brought these papers in—to the best of my recollection, it was in November of 1950, when my husband was at McNeill Island. [161]

Q. Do you know who the agent was from the Department of Internal Revenue?

A. No, I had never met the man before.

Q. Did he say anything to you about these waivers?

(Testimony of Agnes B. Graham.)

A. He asked me to sign this paper, and I told him I didn't take care of business matters, that any papers that were signed I signed them with my husband, and that I would like to take them up to my husband, whom I had intended visiting shortly, and discuss it with him, and he said if I would sign that it would possibly help him get some papers that were needed at the time for my husband's parole.

Q. That is, if you signed these waivers?

A. Yes.

Q. And did you subsequently visit your husband at McNeill Island?

A. Yes, and brought the papers.

Q. Do you recall about when that was?

A. I did visit him in November of 1950.

Q. And you took these papers at that time with you then? A. Yes, to Mr. Graham.

Q. Were they executed at that time?

A. No, sir. He said he wanted to think it over, and that the next time I visited, which was the early part of—it was in January, 1946, my next visit.

Q. Did you discuss them with him at that time? [162] A. Then——

Mr. Watson: Just a minute. Well, go ahead.

A. He evidently had given it consideration and told me that when I returned to California that I should go to the Collector's office, which was necessary to be there in person, to take the paper and sign it, it was all right to go ahead and sign it.

(Testimony of Agnes B. Graham.)

Q. (By Mr. Wagener): Is that when you signed these?

A. After I returned to California, shortly; either within three or four days or a week I came back, to the best of my recollection, I went over to the office of the Internal Revenue here in San Francisco on McAllister Street and signed the papers.

Q. What is your best recollection as to the date when that occurred?

A. Well, as best I can recollect, it must have been some time in January.

Q. In January of—— A. 1946.

Q. 1950 or 1951 we are talking about.

A. 1951.

Q. Was his waiver signed in your presence or not? A. No, sir.

Q. It wasn't? That was left with him?

A. The only paper I signed was the paper that was made out [163] to me. That was the only paper I signed. In San Francisco.

Mr. Watson: Excuse me. I think you asked her a second question, whether the waiver was left with Mr. Graham, and I don't believe she answered that.

Q. (By Mr. Wagener): Was his waiver left with him?

A. I recall that Mr. Graham's waiver was given him at the same time mine was given me.

Mr. Wagener: That is all.

(Testimony of Agnes B. Graham.)

Cross-Examination

By Mr. Watson:

Q. Mrs. Graham, you have testified in connection with this Exhibit D, which is the letter which purportedly established the trust with Frank Hansen, is that correct? A. That is right.

Q. Were you present when this letter was signed by Frank Hansen?

A. I don't know that, sir, but if it were necessary for me to be there to have the signature on the paper, I am sure I was there at the time.

Q. But you don't have any independent recollection of being present—— A. No.

Q. ——when Frank Hansen signed the paper? What was your answer again?

A. I said I have no knowledge. If it were necessary for me to be there when our signatures were put on the paper, I [164] am sure I was there, because my husband always took care of business details, and I signed lots of papers, and either had to be in the attorney's office or sometimes in my husband's office.

Q. On or about the date of August 1st did you have any conversation with Mr. Hansen in connection with this trust arrangement?

A. I don't recollect any conversation.

Q. Have you had any conversation at all with Mr. Hansen in connection with the trust arrangement? A. No, sir, not that I recall.

(Testimony of Agnes B. Graham.)

Q. You do know Mr. Hansen, though?

A. Yes, I do.

Q. Did you have any dealings with him at that time? A. No, I did not.

Q. And have you had any to speak of since that time? A. No.

Q. Was the plan to place the property in Mr. Hansen's name discussed with you?

A. No, it wasn't.

The Court: Read that last question and answer, please.

(Question and answer read.)

Q. (By Mr. Watson): Mrs. Graham, you testified in connection with the deed that is dated August 6th, the deed from you and your husband to Frank Hansen, a single man, is that [165] correct?

A. Yes.

Q. And you also testified that it is your recollection that you signed the deed on August 6, 1946?

A. Yes.

Q. Was it your testimony that you were in the office of Mr. Stimmel at that time?

A. I believe so, sir.

Q. Do you recall whether Mr. Stimmel drew up the deed? A. That I really don't recall.

Q. Did you have any conversation with Mr. Stimmel in connection with the deed before it was drawn? A. No, sir.

Q. Do you know of your own knowledge when the deed was actually recorded?

(Testimony of Agnes B. Graham.)

A. No, I do not.

Q. Did you have any subsequent occasion to visit Mr. Stimmel's office?

A. Not that I remember at the moment. Usually when I would go to Mr. Stimmel's office was when my husband requested I go and we had to sign papers that required my signature in connection with business or anything that required our joint signature.

The Court: Did you go to Mr. Stimmel's office when you signed the letter dated August 1st? [166]

A. That I do not recall, sir.

The Court: Well, do you know whether you went to Mr. Stimmel's office when you signed this deed?

A. I believe we did go to Mr. Stimmel's office.

The Court: What makes you sure of that and not the other?

A. Because I can't recall whether the letter was just signed at the shipyard. There were times I would sign some papers at the office in the yard that were necessary for my signature.

The Court: Were the letter and the deed signed at the same time or not?

A. I don't know, sir. I don't remember that.

Q. (By Mr. Watson): Did Mr. Graham tell you that this deed had been recorded at any time?

A. No, he usually didn't talk business dealings with me. I imagine he took care of it and he didn't mention it to me.

Q. Were you aware of the fact that he received

(Testimony of Agnes B. Graham.)

a deed from Mr. Hansen transferring the property to Catherine Young Cobb?

A. He mentioned it, but since my signature was not necessary he didn't go into very much detail about it. He probably did mention it.

Q. Did you participate in the conversation with Mrs. Cobb [167] that took place some time around May of 1946?

A. I have talked with her in California, but if you are referring to the telephone conversation her father had——

Q. Yes. A. No, I did not.

Q. Did you know about that conversation?

A. Yes, I knew he had put a call through to her. He would usually try to call her when she was away from home on her birthday.

Q. Did you know at that time there were outstanding tax liabilities against yourself and your husband?

A. I didn't know exactly what was wrong. I knew there was probably something wrong. Warren didn't mention it, but I knew he was possibly a little disturbed about things, the way that business was going in the yard.

Q. What led you to believe that this had any connection with the tax liability?

A. Well, he had mentioned there were some—I believe there were some Internal Revenue men at the yard at the time.

Q. At the time? A. I think there were.

Q. I believe that you testified in connection with

(Testimony of Agnes B. Graham.)

your own tax collection waiver, these waivers that were signed by you and purportedly dated November 21st, 1950, that you didn't sign those until you returned from visiting your [168] husband at McNeill Island, is that right?

A. To the best of my recollection, yes, sir.

Q. Did you visit your husband at McNeill Island on previous occasions?

A. November was the first time that I visited my husband.

Q. Were there subsequent visits?

A. As far as I can remember, I believe it was November and in January of 1951, and I believe the last visit was some time in June of 1951.

Q. But——

A. I know I made three visits in all.

Q. But it is your testimony, and you are reasonably sure, you didn't visit your husband before November, 1950?

A. Not that I recall, sir.

Mr. Watson: Your Honor, the deposition of the warden at McNeill Island Prison, a man by the name of Mr. Holmlund, was taken, and that deposition is on file with this court. At this time I would like to offer that deposition which shows the actual dates of Mrs. Graham's visits.

The Court: The warden?

Mr. Watson: Well, the man that was in custody of the records.

The Court: The deposition may be marked Government's Exhibit 15. [169]

(Testimony of Agnes B. Graham.)

Q. Is there any particular reason why you recognize this tax collection waiver?

A. It is the only one that I recall being brought, sir, the one the man brought while my husband was away. That is the only time any papers were brought to me personally. Usually my husband was contacted on those matters.

Q. And I believe it was your testimony on direct examination that you told your husband that if he signed his tax collection waiver that possibly it would help him with his parole?

A. It would in some way help for the papers that were necessary for his parole.

Q. Where did you get the idea that they would help him, that signing these papers would help him in that regard?

A. I don't know. I am just stating what the man said. That was part of his conversation.

Q. Who made the statement to you, do you recall?

A. The man that—the Internal Revenue agent who brought [170] the paper, the waiver.

Q. Do you happen to recall the conversation in any detail?

A. No, other than he said it would help my husband if the papers were signed for these necessary papers that were required at the time for his parole, which apparently was being held up.

Q. He didn't say anything about the parole being held up, did he?

(Testimony of Agnes B. Graham.)

A. He didn't say it was being held up. He said it would no doubt help.

Q. He didn't in any way threaten you?

A. No, I didn't say he threatened me.

Q. Now, Mrs. Graham, you considered this transfer of the property to Mrs. Cobb as a gift, didn't you?

A. As far as I was concerned, yes.

Q. And what was the reason for the gift? Do you happen to know?

A. My personal feelings were about the house that I just didn't care for it at all, and so far as I was concerned, I just didn't want it.

Q. Did your husband tell you his reasons for making the gift?

A. Well, he felt the same way I did because of the way he was traveling and living at the time. And he knew I was unhappy about the place. [171]

Q. When you were in Northern California in 1946 did you live in the house? A. Yes, sir.

Q. And when you were in Northern California in 1947 did you live in the house? A. Yes.

Q. And is the same true with respect to 1948?

A. Yes.

Q. And with respect to 1949? A. Yes.

* * *

(Testimony of Agnes B. Graham.)

Redirect Examination

By Mr. Wagener:

Q. Did you know as a matter of fact during this period of time whether or not Mr. Graham's parole was being held up because of the lack of a report from the Department of Internal Revenue? [172]

A. Well, from what I understood from our attorney, who was out here at the trial and who was then in New York, he had written me and told me that apparently the Internal Revenue was holding up certain papers, that if they had released them would have helped with my husband's parole. [173]

* * *

DANIEL F. CUNNINGHAM

called as a witness on behalf of the United States in rebuttal; sworn.

The Court: State your full name, please.

A. Daniel F. Cunningham.

Direct Examination

By Mr. Watson:

Q. Mr. Cunningham, where do you now reside?

A. In Oakland, California.

Q. What is your present employment?

A. I am a real estate broker and insurance broker.

(Testimony of Daniel F. Cunningham.)

Q. Where were you employed from the years 1946 to 1952?

A. I was employed as a deputy clerk in charge of seizures and sales for the Bureau of Internal Revenue.

Q. What was the nature of your duties during the time of your employment from 1946 to 1952?

A. To collect delinquent taxes primarily, and to seize properties for the government on which taxes were in jeopardy.

Q. In the course of that employment were you assigned the job of collecting the tax liabilities of the defendant, Warren C. Graham? [176]

A. Yes, sir.

Q. Were you actively engaged in collecting those accounts? A. Yes, sir.

Q. Were you familiar with the details of the Collector's office with regard to collection of those accounts? A. Yes, sir.

Q. Were you also present when the witness Thomas H. Graham testified yesterday?

A. Yes, I was.

Q. Then you heard his testimony with respect to the tax collection waivers dated November 21st, 1950? A. Yes, sir.

Q. As part of your duties as an employee of the Revenue Service were you responsible for securing tax collection waivers on the Graham account?

A. I was.

Q. Do you recall sending tax collection waivers

(Testimony of Daniel F. Cunningham.)

to the Collector at Tacoma, Washington, covering the 1942 income tax liability of Mr. Graham?

A. I do.

Q. Can you fix the approximate time such waivers were forwarded to Tacoma for signing?

A. It was in the fall of the year, I believe it was, November.

Q. Do you recall the testimony of Mr. Thomas H. Graham with [177] respect to the letter dated November 16, 1950? A. Yes.

Q. That is the one that—well, I will show you that letter. It is marked for identification purposes as Government's Exhibit 13. I will ask you to read it over.

A. I prepared this letter for the Collector's signature for transmittal to the Tacoma collection district.

Q. Is there anything in particular about the letter that makes you sure?

A. My initials, and the room number in which I was an occupant there at the left top corner of the letter.

Mr. Watson: We will again offer this exhibit for introduction into evidence.

The Court: What exhibit is that? No. 15 for identification?

Mr. Watson: Yes, your Honor.

Mr. Wagener: To which we object, your Honor, on the ground that the letter appears on its face to be a copy and is not the best evidence, and there

(Testimony of Daniel F. Cunningham.)

has been no foundation for the introduction of anything but the original.

The Court: Ask him about the original, where it went.

Q. (By Mr. Watson): Mr. Cunningham, do you have any knowledge of the whereabouts of the original?

A. The original was sent to the Tacoma office and that is a carbon copy of the original. [178]

Q. Do you recall that Mr. Thomas H.* Graham testified yesterday that he had at our request made an examination to try to find the original?

Mr. Wagener: To which we object. We object to the question as incompetent, irrelevant and immaterial as to what another witness testified.

The Court: I think so. Objection is sustained. Do you have the original of the letter?

A. No, I forwarded the original to the Tacoma District.

Mr. Watson: We again offer the letter.

Mr. Wagener: The objection is renewed.

The Court: Well, the witness is the writer of the letter, he said. He mailed the original and does not have the original and says this is a carbon copy. Isn't that a sufficient foundation for the admission?

Mr. Wagener: I think not where there has been no showing why the original is not still in the possession of the government. It may have been an oversight. I didn't hear the witness testify he signed same or saw it signed or that he mailed it.

(Testimony of Daniel F. Cunningham.)

The Witness: I am willing to testify on that question, your Honor.

Q. (By Mr. Watson): Mr. Cunningham, is this a carbon copy of a letter that you prepared for the Collector's signature and that was sent to Tacoma, Washington? [179]

A. That is correct. And the reason why my name didn't appear on this letter is that I did not have the authority to send a letter under my name to the Collector of another district. It had to emanate from the Collector himself

The Court: Was the letter mailed?

A. I mailed it.

The Court: You mailed the letter?

A. Yes.

The Court: The objection may be overruled. It may be admitted.

Q. (By Mr. Watson): You heard the testimony of Mr. Thomas Graham yesterday with respect to his letter dated November 22nd, 1950, which is Government's Exhibit—I believe it is 12.

A. Yes, I did.

The Court: Well, now, I have not looked at this letter before. I think there are a number of things in this letter that are not admissible here and would form no part of this.

I would think that the first paragraph was admissible, but the second, third and fourth paragraphs of the letter contain some personal opinions and a lot of other things that I do not believe to be admissible.

(Testimony of Daniel F. Cunningham.)

Therefore the ruling may be changed, and the first paragraph of the letter may be admitted, and I suggest that the clerk indicate on the letter that the last three paragraphs [180] are not admitted in evidence.

(Whereupon, Paragraph One of letter dated November 16, 1950, was received in evidence and marked United States Exhibit No. 13.)

Q. (By Mr. Watson): Mr. Cunningham, I will hand you Government's Exhibit 12 and Government's Exhibit 4 which is a tax collection waiver—No. 12 being the letter from Thomas H. Graham dated November 22nd, 1950, and I will ask you to examine those documents.

On the basis of your examination of these documents and your recollection, is Exhibit 4 the tax collection waiver, the one which you sent to Tacoma on November 16, 1950, which was returned to you by the Collector on November 22nd, 1950?

A. It is for the same tax, and to the best of my recollection, it is the same date.

Q. But you do recall that the waiver was dated November 21st, 1950?

A. I wouldn't recall the exact date, but I know it was sent in November.

Q. To the best of your recollection, that would be the correct date, is that correct?

A. That is correct.

Q. Were other tax collection waivers forwarded to the tax collector in Tacoma, Washington? [181]

(Testimony of Daniel F. Cunningham.)

A. Yes, they were.

Q. Approximately when were such other waivers sent, if you know?

A. In the early part of 1951, is my best recollection.

Mr. Watson: Your Honor, I have a letter that is addressed to the Hon. Clark Squire, Tacoma, Washington, which bears date of January 26, 1951, which I would like to have marked for identification.

The Court: It may be marked Government's Exhibit 15.

(Whereupon, letter, 1/26/51, referred to above, was marked for identification United States Exhibit No. 15.)

Mr. Watson: I also have a letter addressed to the Collector of Internal Revenue, San Francisco, dated April 6, 1951. It is signed "By L. M. Jones, for Clark Squire, Collector", in Tacoma. I would like to have that marked for identification.

The Court: Government's Exhibit 17 for identification.

(Whereupon, letter, 4/6/51, referred to above, was marked United States Exhibit No. 17 for Identification.)

Mr. Wagener: May we see them, counsel?

Q. (By Mr. Watson): Mr. Cunningham, I will ask you to examine these documents. Now, will you explain the contents of those letters? [182]

(Testimony of Daniel F. Cunningham.)

The Court: Well now, counsel, they haven't been offered in evidence and this is kind of a back-handed way of getting them in, isn't it? Either put them in evidence or not, one way or the other.

Q. (By Mr. Watson): Mr. Cunningham, after examining the letter marked as our Exhibit No. 15, can you state that that is a letter prepared under your direction, or a carbon copy of a letter prepared under your direction? A. Yes, sir.

Mr. Wagener: I object to the question as leading and suggestive.

The Court: Yes, it is leading, but——. What is the letter, Mr. Cunningham?

The Witness: It is a letter of transmittal requesting the Collector of Internal Revenue in Tacoma, Washington, to execute——

The Court (Interposing): Did you write the letter?

A. I wrote the letter of transmittal for the Collector's signature.

The Court: You wrote that letter?

A. Yes.

The Court: What is there on there to indicate that?

A. My initials and my room number.

The Court: The initials at the bottom of the letter?

A. At the top in the lefthand corner. [183]

The Court: And what else?

A. Well, the mere fact that the——

The Court: The room number?

(Testimony of Daniel F. Cunningham.)

A. Room 902.

The Court: That is your room number?

A. That was my room number.

The Court: And where was the original of the letter sent?

A. And the initials of my secretary on there.

The Court: Where was the original of the letter sent?

A. To Tacoma.

The Court: And you mailed it, did you?

A. I did.

Q. (By Mr. Watson): The original of this letter is not now in your possession, is that correct?

A. No, sir.

Q. What is Government's Exhibit 17, Mr. Cunningham?

A. That is a memorandum from the Tacoma office addressed to the Collector of Internal Revenue in San Francisco in which they are——

The Court (Interposing): I don't want to know "in which they are" anything. If it is going in evidence, all right, but if not——

The Witness: It is a covering letter sending the waiver back, the signed waiver. [184]

Q. (By Mr. Watson): Mr. Cunningham, does that letter carry your initials on it?

A. It carries my name and the indelible "D. Cunningham", which indicates when it arrived here it was sent to my attention.

The Court: Is it an original letter?

A. Yes, sir.

(Testimony of Daniel F. Cunningham.)

Q. (By Mr. Watson): Do you recall receiving this letter, Mr. Cunningham?

A. Well, I recall the fact that the request for the waiver was made and that it came back in the ordinary course of business. And the date it was received, and so forth, I couldn't state definitely I had received it on any particular day. But my secretary would open the mail and leave it on my desk, and it went into the file in the usual course, and so on.

Mr. Wagener: I move to strike the entire answer as not responsive to the question, which was whether or not he recalled receiving it.

The Court: It may go out.

Q. (By Mr. Watson): I again ask you, Mr. Cunningham, do you recall receiving this letter?

A. Well, I recall the fact that the request for waiver was made and that was received back in our office.

Mr. Wagener: I make the same motion with respect to [185] this answer.

The Court: It may go out.

Q. (By Mr. Watson): Mr. Cunningham, in the regular course of business in your office would you receive this letter? A. Yes.

Mr. Wagener: I object to the question as calling for an opinion on the part of the witness.

The Court: Oh, I think it does, counsel. You haven't yet offered Exhibit 16. Do you intend to offer it?

Mr. Watson: Yes, your Honor.

(Testimony of Daniel F. Cunningham.)

The Court: All right. Any objection?

Mr. Watson: That is the one he testified was prepared under his direction.

Mr. Wagener: As to Exhibit 16, we will object to it on the ground that it is a copy and I don't think a proper foundation has been shown why the original is not being offered.

The Court: The objection may be overruled. It may be admitted.

(Whereupon, letter dated January 26, 1951, was received in evidence and marked U. S. Exhibit No. 16.)

Q. (By Mr. Watson): On the basis of your examination of these documents and your recollection, can you say that they refer to collection waivers to which you previously testified [186] you sent forward for signature on or about January of 1951?

A. That's right.

Q. Mr. Cunningham, were you present in the courtroom yesterday when Mr. Ebeling, the accountant for the Graham Ship Repair Company, testified?

A. Yes, sir.

Q. Do you recall his testimony?

A. Yes, sir.

Q. Were you the revenue agent who questioned Mr. Ebeling about the withholding and insurance contribution tax rates?

A. I was.

Q. Approximately when was this conversation?

A. On December 5, 1946.

(Testimony of Daniel F. Cunningham.)

Q. Did he explain to you why the returns had not been filed?

A. Said Mr. Graham wouldn't let him file them.

Q. Prior to your conversation with Mr. Ebeling had you contacted Mr. Graham with respect to his tax liabilities?

A. Yes, as early as the first week in August.

Q. What was the purpose of that first contact?

A. I received a transferee assignment from the Kincaid Corporation from New York.

Q. Did you subsequently contact Mr. Graham with respect to his tax liabilities? A. Yes.

Q. When were these contacts made? [187]

A. The first contacts were made in the first week of August, and subsequently telephone calls were made in which sometimes I contacted his secretary, and on several occasions I contacted Mr. Graham himself by telephone. [188]

* * *

HENRY G. MEEHAN

called as a witness on behalf of the Government, in rebuttal; sworn. [195]

The Court: State your name, please.

A. Henry G. Meehan.

Direct Examination

By Mr. Watson:

Q. Mr. Meehan, what is your present employment?

A. With the Internal Revenue Service.

(Testimony of Henry G. Meehan.)

Q. Were you so employed in 1950 and 1951?

A. Yes, I was.

Q. What was the nature of your duties at that time?

A. Collecting delinquent federal taxes.

Q. In connection with those duties did you secure waivers from Mrs. Graham with respect to her income taxes for the year 1942?

A. Yes, I did.

Q. I will show you Government's Exhibit 6-D and ask you if you secured those waivers from Mrs. Graham?

A. Yes, these appear to be the ones that I secured. I could explain that a little bit, what occurred when these waivers came out, another deputy went over to Oakland to the Graham residence to have Mrs. Graham sign the waivers, and at that time she didn't refuse to sign them, but——

Mr. Knox (Interposing): We object to a conversation with which you were not personally familiar, Mr. Meehan.

The Court: Objection sustained.

Q. (By Mr. Watson): Mr. Meehan, did Mrs. Graham present these [196] waivers to you?

A. She brought them in, yes. It is my recollection it was late in the fall of '50.

Q. When she brought those waivers in they were signed by her, is that correct?

A. That is right.

Q. Do you have any reason to believe that the November 21st, 1950, date, the date stamped on the

(Testimony of Henry G. Meehan.)

top of those waivers, was not the date or approximate date that those waivers were signed?

A. No.

Mr. Wagener: I object to the question as calling for an opinion on his part.

The Court: I think it does call for an opinion. I didn't understand your answer, Mr. Meehan.

The Witness: I did——

The Court: Just a moment. Let me phrase it this way: You say Mrs. Graham brought them to the office?

A. Yes.

The Court: You say they were signed when they came in?

A. Yes.

The Court: Do you mean they were signed before they came in, or signed at the office in your presence?

A. She signed in the office in our presence.

Q. (By Mr. Watson): Mr. Meehan, had those waivers previously [197] been taken to Mrs. Graham? A. Yes, they had.

Q. Do you know of your own knowledge who took those waivers? A. Daniel Casey.

Q. Do you know of your own knowledge what happened at that time?

The Court: Well, he couldn't know if he wasn't there.

A. Only the report from the collection officer that was sent out on that.

Q. (By Mr. Watson): You did not alter or

(Testimony of Henry G. Meehan.)

change the date shown on that waiver, did you—those waivers? A. No.

Mr. Knox: I object to the question, assuming a fact not in evidence, that there is any date shown on it.

Mr. Watson: I believe there is a date. They answered some requests for admissions and said the date had been altered or changed.

The Court: I will permit the answer to this question. He may answer.

The Witness: State that question again?

The Court: Read it.

Q. (By Mr. Watson): You did not alter or change the date at any time?

A. No; I did not.

Q. In your conversations with Mrs. Graham, did you ever [198] suggest to her that her husband's parole might be held up if the waivers weren't signed? A. No.

Mr. Watson: That is all.

Cross-Examination

By Mr. Knox:

Q. You have the waivers, Mr. Meehan?

A. Yes; I have the waivers here.

Q. Mr. Meehan, did I understand your testimony to be that Mrs. Graham came into your office?

A. That is right.

Q. And signed these two in your presence?

A. That is right.

(Testimony of Henry G. Meehan.)

Q. And was someone else present?

A. Unless it would be Mr. Cunningham's secretary. She was in that office.

Q. You don't recall specifically whether or not someone was?

A. No; I don't. The secretary was there. She had adjoining offices there. I mean whether she was in the office at the time Mrs. Graham came in I don't know.

Q. Did she bring with her the waiver signed by Mr. Graham?

A. Not to my recollection. All she had was her own.

Q. Did that come in by mail or what?

A. That I don't know.

Q. You don't know?

A. No. I know she delivered this one personally because it [199] was the only time Mrs. Graham was in our office.

Q. At any rate, it is certainly true Mr. Graham didn't sign it in the office that day?

A. That is correct.

Q. I call your attention to these waivers, in which you will note all three are dated November 21, 1950, with a rubber stamp; is that correct?

A. Yes.

Q. Now, sir, will you examine those and tell me whether or not all three rubber stamps appear similar to you?

A. They do; yes.

Q. On the waivers signed by both Mr. Graham and Mrs. Graham?

A. That is correct.

(Testimony of Henry G. Meehan.)

Q. Will you explain to me how those waivers, which appear to be, or which the Government's evidence is, were signed some thousands of miles apart on different dates, have the same date?

Mr. Watson: I object to that as irrelevant.

The Court: If he can answer, let him answer.

A. No; I couldn't answer that question. The only waiver I was interested in was the one Mrs. Graham was bringing in herself at the time she went to Tacoma to visit Mr. Graham to get his advice before she would sign it.

Q. As to Mr. Graham's waiver, you don't know when that was dated? [200]

A. No; I do not know.

Q. As to Mrs. Graham's waiver, do you know when that was dated?

A. The only thing I could go by is November 21st, the date on the rubber stamp.

Q. You have no recollection of putting that date on there yourself?

A. No; I didn't put the dates on.

* * *

LYNN L. HARKNESS

called as a witness on behalf of the Government in rebuttal, sworn:

The Court: State your name, please.

A. Lynn L. Harkness.

Direct Examination

By Mr. Watson:

Q. Mr. Harkness, where are you now employed?

A. I am employed by the Internal Revenue Service.

Q. What is the nature of your present duties?

A. I am a special agent with the Intelligence Division, primarily investigating alleged fraud in income tax cases.

Q. In connection with that employment, are you familiar with the way that ordinary parole reports are prepared in [201] criminal cases, criminal tax cases?

A. Ordinarily, probation and parole—requests for probation or parole reports are made by the Probation Officer or Parole Officer, and the investigating agent who handles the case usually writes a report as requested.

The Court: Usually what?

A. Writes a report as requested, either parole or probation.

The Court: In other words, you get a communication from the Parole Officer asking for certain information about the particular defendant?

A. That is right.

(Testimony of Lynn L. Harkness.)

The Court: And you make a reply back concerning that? A. That is right.

Mr. Watson: Were you recently asked to examine the file in the criminal proceedings involving Warren C. Graham? A. Yes, sir.

Q. Were you asked to look at that file in particular in regard to a parole report?

A. That is right.

Q. And any documents relating to that parole report? A. That is right.

Q. And you have examined the file and are familiar with its contents? A. Yes, sir.

Q. Would you name and explain the documents that relate to the [202] parole report?

A. There was a letter dated April 24th, from the Parole Executive in Washington, D. C., addressed to the chief of the Intelligence Unit, requesting that a parole report be written in this subject case, and also requesting the status of the payment of the tax liabilities.

Q. Now, in that letter is any mention made of when Mr. Graham would be up for parole?

A. Yes.

Mr. Knox: I object to the question as calling for hearsay. I think the letter is the best evidence.

The Court: Sustained.

Q. (By Mr. Watson): All right, will you tell us what other documents are in there?

A. There is also a letter from the chief of the Intelligence Unit in Washington, D. C., addressed to Mr. Charles Davis, who at that time was special

(Testimony of Lynn L. Harkness.)

agent in charge in San Francisco, ordering a copy of the probation report.

Mr. Knox: We object. Again, I think the contents of the letter are hearsay.

The Court: Well, he is not giving the contents. I can't see the materiality at this time.

Q. (By Mr. Watson): Maybe I can shorten your testimony. On the basis of your examination of this file, was the parole report sent out in the ordinary course of business? [203]

A. Yes; it was.

Q. And there is nothing in the file that indicates there was any holdup at all on the report?

A. No, sir.

Mr. Watson: That is all.

Cross-Examination

By Mr. Knox:

Q. Mr. Harkness, I take it you are generally familiar with the parole procedures?

A. Yes, sir.

Q. And with the time in which a prisoner becomes eligible for parole?

A. I would say I am familiar so far as it applies to our office as a procedure, and the request for information from our office, and the procedure that the parole officer gets the information as he does.

Q. Then as nearly as I understand it, your particular function in this connection is to make reports when it is asked for in order to determine whether or not a man is eligible for parole?

(Testimony of Lynn L. Harkness.)

A. That is right.

Q. Are you regularly, in the usual and customary situation in these cases, given some information when the man will become eligible for parole?

A. In this particular case it was mentioned when it would be eligible. [204]

Q. Is that usual and customary?

A. I would say yes.

Q. And when you say "when he would be eligible," does that mean assuming the maximum time off for good behavior and things of that nature?

A. Yes.

Q. Does the department have any practice with respect to whether or not they try to furnish these reports before the earliest date the man is eligible for parole?

A. They are furnished upon request.

Q. How quickly after the request?

A. As soon as practicable.

Q. What is, in the general course of things, practicable for an investigation of this nature?

A. Well, it would depend some on the size of the case involved, I would say, and how much if any additional research or investigation would have to be made subsequent to the time of the original report that went in on the case.

Q. But would six months be considered a short time or a long time?

A. I think that would be considered a long time.

Q. How about four months?

(Testimony of Lynn L. Harkness.)

A. I think an average time would be probably right around 30 days.

Q. For a report such as this? [205]

A. All probation reports.

Q. You testified the report for Mr. Graham was requested on April 24th? A. That is right.

Q. And can you tell me when it was furnished?

A. The report was dated May 25, 1951. It was approved and forwarded by the chief, Intelligence Division, San Francisco, on May 28, 1951. [206]

* * *

WARREN C. GRAHAM

recalled as a witness in his own behalf; previously sworn: [207]

Direct Examination

* * *

Q. (By Mr. Wagener): I show you, Mr. Graham, an envelope bearing a special delivery stamp and air mail stamp, postmarked Athens, Georgia, May 22, 12M, 1948, and bearing return address Box 313, Ag Hill Mail Center, Athens, Georgia, addressed to Mr. Warren C. Graham, 6035 Wood Drive, Oakland, California.

Can you identify that envelope, Mr. Graham?

A. Yes, sir. This is the envelope in which my daughter—[208] I received from my daughter the two deeds which were from Frank Hansen to my daughter, and received by me on the 23rd of May, 1948.

(Testimony of Warren C. Graham.)

The reason why I recall this particular letter is the fact that I took the deeds down and had them recorded and put the receipt in the envelope.

Mr. Wagener: I will ask that this be marked for identification, your Honor.

The Court: For identification?

Mr. Wagener: And put into evidence.

The Court: It may be marked Exhibit L.

(Whereupon, envelope described above was received in evidence and marked Defendant's Exhibit L.)

Q. (By Mr. Wagener): Just one or two other questions, Mr. Graham. Yesterday, did you hear the testimony of Mr. Thomas Graham on behalf of the Government relative to waivers which he said you signed at McNeil Island? A. Yes, sir.

Q. I will call your attention to Government's Exhibit 4, in evidence, which is the waiver purportedly signed by you; and I will ask you if that is the waiver or one of the waivers which you signed for Mr. Thomas Graham at McNeil Island?

A. No, sir. The reason why I say that is because when he came to McNeil, I went into the reception room not with a guard [209] but with the case worker, and that particular waiver I recall specifically was for \$175, and I jokingly remarked with him that, "My God," I said, "Did you come all the way up from San Francisco for \$175? Must have spent a lot of money in plane fare."

(Testimony of Warren C. Graham.)

"No," he said, "I am not from San Francisco. I am only from over here in Tacoma."

Mr. Wagener: That is all I have. Defense rests.

Cross-Examination

By Mr. Watson:

Q. Mr. Graham, isn't it a fact that you signed more than one waiver while you were incarcerated in McNeil Island Penitentiary?

A. Yes, sir.

Q. And do you recall specifically what the other waivers were?

A. No. However, I recall this one specifically because I debated a long time before signing that waiver. I did not want to stay, upon what my wife had told me. I considered it very seriously and ponderously, whether it was worth while to get out and sign that waiver.

Mr. Watson: Your Honor, I have a tax collection waiver which bears the date of March 1st, and the date is in pencil; and it is purportedly signed by Warren Graham.

The Court: Well, what do you want?

Mr. Watson: I want to have it marked for identification. [210]

I want to examine Mr. Graham in connection with it.

The Court: All right, it may be marked Exhibit 18.

(Whereupon document referred to above was marked U. S. Exhibit No. 18 for identification.)

(Testimony of Warren C. Graham.)

Mr. Wagener: May I see it, counsel?

Mr. Watson: (Handing document to counsel.)

Q. Mr. Graham, I will show you Government's Exhibit 18, marked for identification, and ask you if that is your signature on that waiver?

A. Yes. What is the date of that? OK.

Q. On the basis of your examination of this waiver, Mr. Graham, can you state the amount involved?

A. That is for three hundred twenty-five and some odd cents—\$325.

Q. Can you give me the year involved?

A. 1943, it is.

Mr. Watson: I would like to offer this waiver in evidence.

Mr. Wagener: Objected to as incompetent, irrelevant and immaterial. I don't think it relates to any of the causes of action involved in this case, does it, counsel?

Mr. Watson: It relates in this sense: He has testified he signed a small waiver, and right around the date that this waiver bears. We have also had Mr. Cunningham's testimony that other waivers were sent up.

The Court: The defendant admits he signed it and it is [211] his signature. I think it may be admitted and take the same number.

* * *

[Endorsed]: Filed March 23, 1956. [212]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as shown by the records and designated by counsel for the parties: Except the Reporter's Transcript of Trial Proceedings:

Complaint.

Notice Lis Pendens.

Motion for Appointment of Receiver.

Order Appointing Receiver.

Notice of Hearing on Motion for Appointment of Receiver.

Answer of County of Alameda.

Answer by Disclaimer of Crofts and Anderson.

Answer of City of Oakland.

Order to Show Cause re Permanent Receiver.

Stipulation That No Receiver Be Appointed.

Order Dismissing Receiver.

Amendment to Complaint.

Stipulation for Amendment to Complaint and Answer to City of Oakland.

Stipulation for Amendment to Complaint and Answer to County of Alameda.

Dismissal by Plaintiff as to State of California and State Board of Equalization.

Motion of State of California for Leave to Intervene.

Complaint in Intervention by State of California.

Order Granting State of California Leave to Intervene.

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Complaint.

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Complaint in Intervention.

Filed Stipulation for Answer by State of California.

Order Adding Mercantile Acceptance Company as Party Defendant.

Answer of Mercantile Acceptance Company to Complaint.

Order Granting Plaintiff Leave to File Second Amendment to Complaint.

Second Amendment to Complaint.

Disclaimer and Withdrawal of Answer of Mercantile Acceptance Company.

Answer of Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Second Amendment to Complaint.

Interrogatories by United States to Warren C. Graham and Agnes B. Graham.

Request for Admissions by United States to Warren C. Graham.

Request for Admissions by United States to Agnes B. Graham.

Answer of Agnes B. Graham to Interrogatories by United States.

Answer of Warren C. Graham to Interrogatories by United States.

Answer of Agnes B. Graham to Request for Admissions.

Answer of Warren C. Graham to Request for Admissions.

Notice and Motion by United States for Order for Accounting or Appointment of Receiver and for Production and Discovery of Documents.

Order for Accounting and Production of Documents.

Affidavit and Accounting of Rents by Warren C. Graham.

Interrogatories by Warren C. Graham, Agnes B. Graham, Catherine Young Cobb and J. Preston Cobb to Harry W. Holmlund.

Stipulation of Facts re Reserves for Public Utilities Purposes by City of Oakland, a Municipal Corporation.

Stipulation of Facts re Liens of State of California.

Stipulation re Amendment of Pleadings of State of California.

Stipulation of Counsel Regarding Facts.

Third Amendment to Complaint.

Order for Complaint to Be Amended to Conform to Proof.

Findings of Fact and Conclusions of Law.
Judgment.

Decree of Foreclosure and Order of Sale.

Notice of Appeal by Warren C. Graham,
Agnes B. Graham, Catherine Young Cobb, and

Amended Notice of Appeal by Warren C.
Graham, et al.

Certified Copy of Decree of Foreclosure With
Marshal's Return Thereto.

Designation of Record on Appeal by Warren
C. Graham, et al.

Bond on Appeal.

Designation of Record on Appeal by State
of California.

Designation of Record on Appeal by United
States of America.

Plaintiff's Exhibits: 1, 2, 3, 4, 4a, 5, 6a, 6b, 6c,
6d, 6e, 6f, 7a, 7b, 7c, 8a, 8b, 8c, 9, 10, 11, 12, 13, 14,
15, 16, 17 (identification) and 18.

Defendants' Exhibits: A, B, B1, C, D, E, F, G,
H1, H2, I (identification), J, K and L.

In Witness Whereof, I have hereunto set my hand
and affixed the seal of said District Court this 23rd
day of November, 1955.

[Seal] C. W. CALBREATH,
Clerk;

By /s/ MARGARET BLAIR,
Deputy Clerk.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
SUPPLEMENTAL RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify the foregoing document, listed below, to be the original filed in this Court in the above-entitled case and that it constituted the supplemental record on appeal herein as designated by attorneys for the appellants:

Reporter's Transcript of Proceedings, Aug. 17 and 18, 1955.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 23rd day of March, 1956.

[Seal]

C. W. CALBREATH,
Clerk;

By /s/ MARGARET BLAIR,
Deputy Clerk.

[Endorsed]: No. 14,965. United States Court of Appeals for the Ninth Circuit. Warren C. Graham and Agnes B. Graham, His Wife, and Catherine Young Cobb, Appellants, vs. United States of America, State of California, City of Oakland and County of Alameda, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 6, 1955.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 14,965

WARREN C. GRAHAM, et al.,

Appellants,

vs.

UNITED STATES OF AMERICA, et al.,

Respondents.

STATEMENT OF APPELLANTS' POINTS ON
APPEAL AND DESIGNATION OF POR-
TIONS OF RECORD TO BE PRINTED

To the Clerk of the Above-Entitled Court:

Please Take Notice that the defendants and appellants herein intend to base their appeal upon the following points:

I.

The Court erred in refusing to admit testimony tending to show that the purported Kincaid Company transferee tax assessment was not valid.

II.

The tax collection waivers were obtained under duress and were therefore invalid.

III.

The Court erred in concluding that the conveyance by Warren C. Graham and Agnes B. Graham to Frank Hansen was a sham for the purpose of

defeating Federal tax liens, and that the subsequent transfer to Catherine Young Cobb was for the same purpose, or a gift.

Dated: March 9, 1956.

WAGENER, BRAILSFORD &
KNOX.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 13, 1956.

[Title of Court of Appeals and Cause.]

APPLICATION FOR LEAVE TO CORRECT
AN OVERSIGHT AND OMISSION UNDER
RULE 60 OF THE FEDERAL RULES OF
CIVIL PROCEDURE

Upon application of the United States of America under Rule 60 of the Federal Rules of Civil Procedure to this Court for leave to permit the United States District Court to correct an oversight and omission in the Decree of Foreclosure and Order of Sale made and entered September 13, 1955, as more particularly set forth in the Motion of the United States of American attached hereto, and good cause appearing therefor,

It Is Hereby Ordered that leave be and the same is hereby granted to the United States District Court to amend the said Decree of Foreclosure and

Order of Sale of September 13, 1955, in the manner as set forth in the said attached Motion.

/s/ WILLIAM DENMAN,
Chief Judge;

WALTER L. POPE,

/s/ HOMER T. BONE,
Judges of the Court of
Appeals.

[Endorsed]: Filed July 2, 1956.